

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

WARREN A. OVALLE,

Plaintiff,

-against-

COMPLAINT AND JURY
DEMAND

Docket No.:

SUFFOLK COUNTY, SUFFOLK COUNTY
SHERIFF'S DEPARTMENT, SUFFOLK COUNTY
SHERIFF'S DEPARTMENT CORRECTIONS OFFICERS
JOHN DOE #1-10, INDIVIDUALLY & AS SHERIFF'S
DEPARTMENT CORRECTIONS OFFICERS IN THEIR
OFFICIAL CAPACITY, DEPARTMENT OF
CORRECTIONS AND COMMUNITY SUPERVISION
(herein after referred to as "DOCCS"), DOCCS ACTING
COMMISSIONER ANTHONY ANNUCCI, INDIVIDUALLY
& AS DOCCS ACTING COMMISSIONER IN HIS
OFFICIAL CAPACITY; DOCCS PAROLE OFFICER
SABRINA HAMLETTE, INDIVIDUALLY & AS DOCCS
PAROLE OFFICER IN HER OFFICAL CAPACITY; DOCCS
PAROLE OFFICER LOREN OWENS-SKRODANCE,
INDIVIDUALLY & AS DOCCS PAROLE OFFICER IN
HER OFFICAL CAPACITY, DOCCS PAROLE OFFICER
PEDRO TORRES, INDIVIDUALLY & AS DOCCS
PAROLE OFFICER IN HIS OFFICAL CAPACITY, DOCCS
PAROLE OFFICER ROSS BOTWINICK, INDIVIDUALLY
& AS DOCCS PAROLE OFFICER IN HIS OFFICAL
CAPACITY, DOCCS SENIOR PAROLE OFFICER GARRY
JUSTE, INDIVIDUALLY & AS DOCCS SENIOR PAROLE
OFFICER IN HIS OFFICAL CAPACITY, DOCCS SENIOR
PAROLE OFFICER SCOTT HNIS, INDIVIDUALLY & AS
DOCCS SENIOR PAROLE OFFICER IN HIS OFFICAL
CAPACITY, OFFICE OF SPECIAL INVESTIGATION,
OFFICE OF SPECIAL INVESTIGATION INVESTIGATOR
CATHERINE MENCARELLI, INDIVIDUALLY & AS
OFFICE OF SPECIAL INVESTIGATION INVESTIGATOR
IN HER OFFICAL CAPACITY, DOCCS PAROLE
VIOLATIONS CHIEF EDWARD DELRIO,
INDIVIDUALLY & AS DOCCS PAROLE VIOLATIONS
CHIEF IN HIS OFFICAL CAPACITY, DOCCS REGIONAL
DIRECTOR IRWIN DAVIS, INDIVIDUALLY & AS
DOCCS REGIONAL DIRECTOR IN HIS OFFICAL
CAPACITY, BUREAU CHIEF OF SUFFOLK COUNTY

PAROLE JARVIS JENKINS, INDIVIDUALLY & AS
BUREAU CHIEF OF SUFFOLK COUNTY PAROLE IN HIS
OFFICIAL CAPACITY, NEW YORK STATE
ATTORNEY GENERAL OFFICE, NEW YORK
STATE ATTORNEY GENERAL OFFICE and ASSISTANT
ATTORNEY GENERAL LAURIE PACK, INDIVIDUALLY
AND AS ASSISTANT ATTORNEY GENERAL IN HER
OFFICIAL CAPACITY,

Defendants.

Plaintiff, WARREN A. OVALLE, by his attorneys, Ferro, Kuba, Mangano, P.C. for his Complaint
alleges as follows:

PRELIMINARY STATEMENT

1. This is a civil rights action in which Plaintiff seeks relief for the violation of his rights secured by 42 U.S.C. §1981 §1983, §1985, §1988, the Fourth and Fourteenth Amendments to the United States Constitution.

2. This claim arises from Plaintiff's wrongful confinement and/or imprisonment in Suffolk County and New York State Correctional facilities at various times during the period of September 18, 2017 through October 11, 2019, by all defendants who acted under the color of state law and their intentional, deliberate, malicious, reckless, grossly negligent, negligent, careless actions and/or with no reasonable basis to violate Plaintiff's conditions of parole, due process and civil rights as set forth in detail below.

3. Plaintiff seeks monetary damages (special, compensatory, and punitive) against Defendants, as well as an award of costs and attorney's fees, and such other and further relief as this Court deems just and proper.

JURISDICTION

4. This action is brought pursuant to 28 USC §1331, 42 USC §1981 §1983, §1985,

§1988, the Fourth and Fourteenth Amendments to the United States Constitution. This Court has original jurisdiction pursuant to 28 USC §1251 as a federal question is present pursuant to 42 USC §1981, §1983, §1985, §1988 and 28 USC §1343.

5. The amount in controversy exceeds \$75,000 excluding interest and costs.

VENUE

6. Venue is laid within the United States District Court for the Eastern District of New York in that all Defendants' Agencies and/or Offices, are located within, and a substantial part of the events giving rise to the claim which occurred within the boundaries of the Eastern District of New York. Hence the Eastern District of New York is the appropriate venue pursuant to 28 USC §1291(b).

PARTIES

7. Plaintiff, Warren A. Ovalle, is a legal resident of the United States and is presently residing in Suffolk County, City and State of New York.

8. Upon information and belief, defendants, Suffolk County is a municipal corporation organized and existing under the laws of the State of New York, with a principal place of business in the County of Suffolk, State of New York.

9. Upon information and belief, defendant, Suffolk County Sheriff's Office is a municipal corporation organized and existing under the laws of the State of New York, with a principal place of business in the County of Suffolk, State of New York.

10. Upon information and belief, defendant, Department of Corrections and Community Supervision, is a New York State corporation organized and existing under the laws of the State of New York, with a principal place of business in the County of Albany, State of New York.

11. Upon information and belief, defendant, Commissioner Anthony Annucci was

employed by the Department of Corrections and Community Supervision and maintains an office in the County of Albany, State of New York.

12. Upon information and belief, defendant, Parole Officer Sabrina Hamlette was employed by the Department of Corrections and Community Supervision and maintains an office in the County of Suffolk, State of New York.

13. Upon information and belief, defendant, Parole Officer Loren Owens-Skrodance, was employed by the Department of Corrections and Community Supervision and maintains an office in the County of Suffolk, State of New York.

14. Upon information and belief, defendant, Parole Officer Pedro Torres, was employed by the Department of Corrections and Community Supervision and maintains an office in the County of Suffolk, State of New York.

15. Upon information and belief, defendant, Parole Officer Ross Botwinick, was employed by the Department of Corrections and Community Supervision and maintains an office in the County of Suffolk, State of New York.

16. Upon information and belief, defendant, Senior Parole Officer, Garry Juste, was employed by the Department of Corrections and Community Supervision and maintains an office in the County of Suffolk, State of New York.

17. Upon information and belief, defendant, Senior Parole Officer, Scott Hnis, was employed by the Department of Corrections and Community Supervision and maintains an office in the County of Suffolk, State of New York.

18. Upon information and belief, defendant, the Office of Special Investigation, is an agency of the Department of Corrections and Community Supervision and maintains an office in the County of Albany, State of New York.

19. Upon information and belief, defendant, Investigator Catherine Mencarelli, was Employed by the Office of Special Investigation, and maintains an office in the County of Albany, State of New York.

20. Upon information and belief, defendant, Parole Violations Chief, Edward Delrio, was employed by the Department of Corrections and Community Supervision and maintains an office in the County of New York, State of New York.

21. Upon information and belief, defendant, Regional Director, Irwin Davis, was employed by the Department of Corrections and Community Supervision and maintains an office in the County of Queens, State of New York.

22. Upon information and belief, defendant, Bureau Chief of Suffolk County Parole, Jarvis Jenkins, was employed by the Department of Corrections and Community Supervision and maintains an office in the County of Suffolk, State of New York.

23. Upon information and belief, defendant, New York State Attorney General's Office, is a New York State agency, and maintains an office located in the County of New York, State of New York.

24. Upon information and belief, defendant, Assistant Attorney General Laurie Pack, Esq. was employed by the New York State Attorney General's Office, and maintains an office located in the County of Suffolk, State of New York.

25. At all times relevant hereto, Defendant, Suffolk County, acting through the Sheriff's Office, was responsible for the policy, practice, supervision, implementation, and conduct of all Sheriff's Office's matters, including the operation of its correctional facilities, and/or county jails and was responsible for the appointment, training, supervision, discipline and retention and conduct of all Sheriff's Office personnel. In addition, at all times here relevant, Defendant, Suffolk County

was responsible for enforcing the rules of the Sheriff's Office, and for ensuring that the Sheriff's office personnel obey the laws, statutes, rules, regulations, codes and mandates of the United States and the State of New York.

26. All other defendants, including John Doe #1-10, individuals whose names are currently unknown to plaintiff are employees of the Suffolk County Sheriff's Office and are sued in their individual capacities.

27. At all times relevant hereto, Defendant, Department of Corrections and Community Supervision (hereinafter referred to as "DOCCS"), and its related agencies, divisions and departments, including Office of Special Investigations, were responsible for the policy, practice, supervision, implementation, and conduct of all Commissioners, Regional Directors, Parole Violations Chiefs, Senior Parole Officers, Parole Officers, and Department of Corrections and Community Supervision and/or Division of Parole matters, and were responsible for the appointment, training, supervision, discipline and retention and conduct of all DOCCS personnel. In addition, at all times here relevant, Defendant, DOCCS, was responsible for enforcing the rules of its agencies and/or divisions and/or departments, and for ensuring that the DOCCS's personnel obey the laws, statutes, rules, regulations, codes and mandates of the United States and the State of New York.

28. All other defendants, including, Commissioner Anthony Annucci, Regional Director Irwin Davis, Parole Violations Chief Edward Delrio, Bureau Chief of Suffolk County Parole Jarvis Jenkins, Parole Officer Sabrina Hamlette, Parole Officer Loren Owens-Skrodance, Parole Officer Pedro Torres, Parole Officer Ross Botwinick, Senior Parole Officer Garry Juste, Senior Parole Officer Scott Hnis, OSI Investigator Catherine Mencarelli, are employees of the State of New York and New York State DOCCS and are sued in their individual capacities.

29. At all times relevant hereto, Defendant, New York State Attorney General's Office, was responsible for the policy, practice, supervision, implementation, and conduct of all New York State Attorney General matters, and was responsible for the appointment, training, supervision, discipline and retention and conduct of all Assistant Attorney General personnel. In addition, at all times here relevant, Defendant, New York State Attorney General's Office was responsible for enforcing the rules of its Office, and for ensuring that its Assistant Attorney Generals, obey the laws, statutes, rules, regulations, codes and mandates of the United States and the State of New York.

30. All other defendants, Assistant Attorney General Laurie Pack, is an employee of the New York State Attorney General's Office and is sued in her individual capacity.

31. At all times relevant hereto, all Defendants were acting under color of state law, to wit, under the color of the statutes, ordinances, regulations, codes, policies, customs and usages of the County of Suffolk and State of New York.

FACTUAL ALLEGATIONS

32. On January 7, 2010, Plaintiff was convicted of assault in the second degree and sentenced to a six-year incarceration followed by five years post-release supervision.

33. On or about March 17, 2015, Plaintiff completed the incarceration portion of his sentence and was released to the Department of Corrections and Community Service (hereinafter referred to as "DOCCS") to serve his post-release supervision, with a maximum expiration date for his five years of post-release supervision to be on March 19, 2020. A special condition of Plaintiff's parole supervision included that he was not permitted to fraternize with his co-defendant, Robert Akre. Plaintiff's Parole Officer, P.O. Sabrina Hamlette, never properly reviewed the Special Conditions of Release document with Plaintiff, nor were the required

signatures secured to activate imposition of said Special Conditions and were therefore unenforceable, could not sustain a parole violation detainer warrant and therefore said warrant was not valid on its face. Defendant's use of the invalid parole detainer warrant resulted in the wrongful arrest and confinement of Plaintiff and violated his state and federal due process rights. Annexed hereto as Exhibit "1" and "2" are copies of the Certificate of Release to Post-Release Supervision dated March 17, 2015 and Special Conditions to Parole Supervision dated November 2, 2016.

34. On or about September 18, 2017, Plaintiff was violated on a parole violation detainer warrant, (warrant #0762538), which cited a delinquency date of May 26, 2017 and Plaintiff was subsequently incarcerated. The violation detainer warrant alleged, the Plaintiff violated conditions of his post release supervision and declared him delinquent with a filing of a declaration of delinquency on May 26, 2017, more specifically that Plaintiff violated a special condition of his parole by meeting with his co-defendant, Robert Akre. As such, pursuant to New York State Penal Law §70.40(3)(b) and §70.45(5)(d)(i)and(ii), Plaintiff's post-release supervision was interrupted on May 26, 2017 and the interruption continued until such time Plaintiff would be restored to post release supervision (which did not occur here). The DOCCS, specifically the Division of Parole, lacked jurisdiction to issue said parole violation detainer warrant while Plaintiff was under the custody and supervision of Suffolk County Correctional facility and not the Division of Parole. Therefore, the DOCCS did not have the jurisdiction to issue the parole warrant. Annexed hereto as Exhibit "3" is a copy of parole violation warrant #0762538.

35. On September 18, 2017, the DOCCS, and specifically Regional Director Irwin Davis, Bureau Chief of Suffolk County Parole Jarvis Jenkins, Senior Parole Officers Garry Juste

and Scott Hnis, Parole Officers Sabrina Hamlette, Loren Owens-Skrodance, Pedro Torres, Ross Botwinick and Office of Special Investigation Catherine Mencarelli, were all present and involved in the arrest of Plaintiff at his mother's residence. The DOCCS and the above-named defendants did not have a warrant and illegally searched plaintiff's mother's entire residence without permission or consent and illegally seized items, some of which have not been returned to Plaintiff's mother, in violation of Plaintiff's Fourth Amendment rights.

36. On September 25, 2017, a preliminary parole violation hearing for parole detainer warrant #0762538 was held at the Suffolk County Correctional Facility in Riverhead, New York. At the preliminary hearing, the Division of Parole attempted to establish probable cause that Plaintiff violated Charge #3 (Rule 7) and Charge #10 (Rule 13) as contained in the parole violation detainer warrant, having contact with his co-defendant, Robert Akre, a special condition of his release to parole supervision. At the conclusion of this hearing, the Administrative Law Judge found no probable cause as to charge #3 but found probable cause as to charge #10. As a result of this probable cause finding, Plaintiff remained wrongfully incarcerated pending a final parole revocation hearing and he was not returned to parole supervision. Plaintiff's Parole Officer, P.O. Sabrina Hamlette, never properly reviewed or gave notice of the Special Conditions of Release document to Plaintiff, nor were the required signatures secured to activate imposition of said Special Conditions and were therefore unenforceable, could not sustain a parole violation at the hearing and therefore the warrant was not valid. Annexed hereto as Exhibit "4" is a copy of the Board of Parole Preliminary Violation Hearing Decision and Summary dated September 25, 2017.

37. Plaintiff filed a Writ of Habeas Corpus with the Supreme Court, Suffolk County claiming there was insufficient evidence presented at his preliminary hearing to support a finding

of probable cause as to charge #10 and requested that the Court review the legality of his detention. Furthermore, at the Writ of Habeas Corpus, it was established that Plaintiff's co-defendant, Robert Akre, was working in Hempstead, Nassau County on May 26, 2017 and therefore could have been present at Plaintiff's residence in Central Islip, Suffolk County as alleged in the parole violation detainer warrant. The DOCCS, and specifically Parole Officer Sabrina Hamlett and Office of Special Investigation Investigator Catherine Mencarelli acted in bad faith when they fabricated and filed a false charge (charge #10) against Plaintiff to violate his parole and wrongfully arrest and imprison him. To the extent the Administrative Law judge accepted said charge and parole violation detainer warrant into evidence at the preliminary hearing the DOCCS, and specifically Parole Officer Sabrina Hamlett and Office of Special Investigation Investigator Catherine Mencarelli, also committed perjury and filed a false report. In addition, Commissioner Anthony Annucci, Regional Director Irwin Davis, Bureau Chief of Suffolk County Parole Jarvis Jenkins, Senior Parole Officer Garry Juste all had knowledge of and approved the filing of the aforesaid false charge in parole violation detainer warrant #0762538. On November 29, 2017, the Honorable Justice Joseph A. Santorelli granted Plaintiff's Writ of Habeas Corpus finding that probable cause had not been established and ordered Plaintiff be released from custody and returned to parole supervision. On November 30, 2017, Justice Santorelli signed a written Order that parole violation detainer warrant #0762538 be lifted, which Plaintiff's counsel subsequently served on the Suffolk County Correctional Facility, the New York State Division of Parole and the New York State Attorney General's Office. Pursuant to New York State Penal Law §70.40(3)(b) and §70.45(5)(d)(i)and(ii), Plaintiff was not on post release supervision or parole from September 18, 2017, the date the aforementioned parole detainer warrant was issued and Plaintiff was placed into the custody of the Suffolk County Jail

on said parole violation warrant, through October 11, 2019. Plaintiff was wrongfully detained in violation of Judge Santorelli's Court Order because he was targeted as a minority and victimized by the systematic racism approved and enforced by the above-referenced Defendants. Annexed hereto as Exhibit "5", is a copy of the Honorable Justice Joseph A. Santorelli Order dated November 30, 2017.

38. The Honorable Justice Santorelli's granting of Plaintiff's Writ of Habeas Corpus and finding that probable cause did not exist to support the parole warrant #0762538 demonstrates there was no legal justification or valid affirmative defense to Plaintiff's wrongful arrest and subsequent confinement and for the violation of his civil and due process rights as afforded by the United States and New York State Constitutions. Therefore, the DOCCS acted in bad faith in not releasing Plaintiff from custody and returning him to community supervision. Instead of the DOCCS acting lawfully by releasing and returning Plaintiff to parole and/or community supervision they double downed on their unlawful and improper conduct and issued a subsequent false and unfounded parole violation detainer warrant that was ultimately dismissed by the Honorable Justice Schick who held "This Court having found that the violation of parole charges against Warren Ovalle (issued by the Division of Parole) were brought in bad faith and were an abuse of discretion."

39. On November 30, 2017, while Plaintiff was awaiting release from custody pursuant to Justice Santorelli's Order, the Division of Parole issued and executed a new parole violation detainer warrant #762686, which cited a delinquency date of September 23, 2017, a time period when Plaintiff's post-release supervision was interrupted and not in effect and charging Plaintiff with the same parole violations that had been vacated by the Honorable Justice Joseph A. Santorelli on November 29, 2017, again in violation of Plaintiff's right to due process

afforded under the United States and New York State Constitutions and double-jeopardy laws. In addition, Defendants wrongfully detained Plaintiff in direct violation of the Honorable Justice Santorelli's Order dated November 30, 2017, again violating Plaintiff's civil and due process rights afforded under the United States and New York State Constitutions. Defendant, Suffolk County Sheriff's Office, and specifically the Sheriff's Department Corrections Officers John Doe #1-10, violated Honorable Justice Santorelli's Order dated November 30, 2017, by failing to release plaintiff as ordered by said Judge (even assuming the new parole violation warrant was valid, which plaintiff clearly contests, he still should have been released by Defendant, Suffolk County Sheriff's Office). Defendant, the DOCCS and New York State Attorney's General Office conspired with the Suffolk County Sheriff's Office by failing to disclose that Plaintiff was being charged with additional/supplemental parole violations during the pendency of his Writ of Habeas Corpus before Justice Santorelli despite having prior notice and being in possession of same (the alleged additional/supplemental parole violations). The DOCCS and/or Division of Parole intentionally did not disclose the alleged additional/supplemental parole violations despite having notice of them before and during the pendency of plaintiff's Writ of Habeas Corpus before the Honorable Justice Santorelli in order to wrongfully detain plaintiff if the Honorable Justice Santorelli granted the Writ of Habeas Corpus which he did. Furthermore, parole violation detainer warrant #762686 was not valid on its face and the DOCCS did not have the authority to issue the warrant because Plaintiff was not under the DOCCS supervision. Annexed hereto as Exhibit "6" and "7" are copies of parole violation warrant #762686 and page 9 of New York State – DOCCS Community Supervision Parolee Report Chrono Report dated December 3, 2018 and more specifically the entries dated October 30, 2017.

40. The DOCCS Community Supervision Parolee Chrono Report with an entry date

of October 30, 2017, annexed hereto as Exhibit "7", memorializes relevant entries from the Division of Parole's case management system entered by Plaintiff's assigned Parole Officer, specifically P.O. Sabrina Hamlet, as they pertain to Plaintiff, Mr. Ovalle's Parole Officer, P.O. Hamlet prepared an entry dated October 30, 2017, a month prior to Mr. Ovalle's November 29, 2017 Writ of Habeas Corpus, supplemental violations of parole were submitted with 5 additional fraternizing charges that were dated for 10/6/17, 10/10/17, 10/13/17, 10/20/17 and 10/25/17 due to plaintiff, Mr. Ovalle, continuing to have contact with his co-defendant while incarcerated at Yaphank Correctional Facility. In addition, the Supervising Parole Officer, Garry Juste, reviewed and approved these alleged supplemental violations of parole charges on November 7, 2017. The DOCCS' Commissioner Anthony Annucci, Regional Director Irwin Davis and Parole Violation Chief, Edward Delrio, Bureau Chief of Suffolk County Parole, Jarvis Jenkins all had knowledge of and reviewed the additional/supplemental charges that were part of the prior parole violation detainer warrant #762538 and further approved the alleged additional/supplemental charges to improperly support a new detainer warrant #762686, despite those same charges having been dismissed by the Honorable Justice Santorelli and thus no longer valid for the sole purpose of keeping plaintiff illegally imprisoned in violation of his federal and state civil and due process rights. Based on the dates of these additional/supplemental fraternizing charges, all in October of 2017, they were clearly known to the DOCCS during the pendency of parole detainer warrant #762538 and prior to the Writ of Habeas Corpus before Honorable Justice Santorelli on November 29, 2017, and therefore were part of said prior detainer warrant (#762538). Therefore, the supplemental and/or additional fraternizing charges dated for 10/6/17, 10/10/17, 10/13/17, 10/20/17 and 10/25/17 were no longer valid when the Honorable Justice Santorelli dismissed parole detainer warrant #762538, which they had become a part of. These five

additional/supplemental fraternizing charges were deliberately and improperly not served on Plaintiff or his counsel during the pendency of the Writ of Habeas Corpus, despite being known to the DOCCS and the New York State Attorney General's Office to wrongfully keep Plaintiff detained and imprisoned in violation of his Constitutionally protected civil and due process rights. These five additional/supplemental fraternizing charges were deliberately and improperly withheld from Mr. Ovalle and his counsel by the DOCCS and the New York State Attorney General's Office so that they could improperly lodge them in the subsequent detainer warrant #762686, in case Judge Santorelli granted the Writ of Habeas Corpus which he did. In fact, the DOCCS waited until the day that Mr. Ovalle was supposed to be released to serve these alleged additional fraternizing charges against him, even though the DOCCS and the New York State Attorney General's Office was aware of these charges more than thirty (30) days prior. Clearly, the DOCCS, and specifically Commissioner Anthony Annucci, Regional Director Irwin Davis and Parole Violation Chief, Edward Delrio, Bureau Chief of Suffolk County Parole, Jarvis Jenkins, and the New York State Attorney General's Office, and specifically Ms. Laurie Pack, Esq., were acting in bad faith by not serving these additional/supplemental violation of parole charges on Plaintiff and his counsel during the pendency of his Writ of Habeas Corpus, despite being known to them. This was an improper and deliberate act to wrongfully keep Plaintiff detained and imprisoned in violation of his Constitutionally protected civil and due process rights. Furthermore, the additional fraternizing charges demonstrate Plaintiff was incarcerated at Yaphank Correctional Facility and was under the custody and control of the Suffolk County Sheriff's Office and not the DOCCS and therefore the special conditions of parole, restricting Plaintiff from meeting with Mr. Akre, were not enforceable. The DOCCS, and specifically Commissioner Anthony Annucci, Regional Director Irwin Davis and Parole Violation Chief,

Edward Delrio, Bureau Chief of Suffolk County Parole, Jarvis Jenkins, did not have the jurisdiction to lodge the parole warrant and the parole warrant was not valid on its face because it charged conduct and acts that were part of the prior warrant that was already dismissed by Judge Santorelli.

41. On December 4, 2017, Plaintiff was ordered by Defendants' Housing Unit Officer at the Yaphank Correctional Facility to pack-up his belongings because he was being released to the public. Plaintiff believed this to be true because the Honorable Justice Santorelli had just granted his Writ of Habeas Corpus and lifted his parole violation detainer warrant. Instead of releasing Plaintiff, which the defendant, Suffolk County Sheriff's Office was legally obligated to do, the Suffolk County Sheriff's Office and Suffolk County Sheriff's Officers John Doe #1-10, in collusion with the DOCCS transported Plaintiff to Riverhead Jail with no legal basis. Plaintiff was illegally detained at the Riverhead Correctional facility and intimidated by two Suffolk County Sheriff's CERT Officers, two In House Security Sergeants, a Lieutenant and DOCCS Parole Officer Sabrina Hamlett just to serve parole violations that should have been mailed to Plaintiff's attorney on file. Plaintiff was intentionally and wrongfully detained at the Riverhead Correctional Facility for over a month and his classification was upgraded to the highest security status due to the Suffolk County Sheriff's Office and the DOCCS conspiring and colluding to fabricate that Plaintiff made a phone call to parole threatening them. Plaintiff never made this phone call to parole and there are no phone records or any physical evidence to substantiate this false allegation (despite the fact that all phone calls at the Correctional facility and Division of Parole are, upon information and belief, recorded). In addition, Plaintiff was repeatedly transported between Yaphank Correctional Facility to Riverhead Correctional Facility by the Suffolk County Sheriff's Office and Suffolk County Sheriff's Officers John Doe #1-10, more

than fifteen times for no legitimate purpose, except for possible “diesel therapy”, from September of 2017 through March of 2018. During these transports, Plaintiff lost his single cell status, dormitory status, loss of property, loss of legal documents, loss of commissary and subjected to threats by the Sheriff’s Correctional Officers John Does #1-10. Moreover, Plaintiff was targeted by the Defendants and DOCCS as a minority and repeatedly and systematically threatened, punished, victimized and denied his civil rights.

42. On December 13, 2017, a preliminary parole revocation hearing was held for the subsequent parole violation, detainer warrant #762686, before Preliminary Hearing Officer Sharon Burnett at the Suffolk County Correctional Facility in Riverhead, New York. At the preliminary hearing the Division of Parole attempted to establish that Plaintiff violated Charge #44, meeting with co-defendant, Robert Akre, at the Suffolk County Correctional Facility on October 10, 2017, in violation of Plaintiff’s special conditions of his parole (a time period that Plaintiff’s parole supervision was interrupted and not in effect). The Preliminary Hearing Officer incorrectly determined that Plaintiff was under parole supervision while detained at the Suffolk County Correctional Facility and incorrectly found that probable cause existed to substantiate the parole violation. The Division of Parole acted in bad faith by improperly charging Plaintiff with parole violations that had been previously vacated by the Honorable Justice Santorelli, during a period that Plaintiff was not on parole supervision, unlawfully depriving him of his fundamental rights to due process and liberty. Additionally, the Division of Parole failed to advise Plaintiff or his counsel that it intended to file additional alleged parole violations despite having notice of and being in possession of said additional alleged parole violations while Plaintiff’s Writ of Habeas Corpus was being heard by the Honorable Justice Santorelli, Conditions or Special Conditions of parole are specifically imposed to regulate conduct while on parole in the

community and not while the parolee is in the custody of a county jail or state correctional facility. The Division of Parole does not have jurisdiction when the parolee is in the custody of a county jail or state correctional facility. The DOCCS and/or Division of Parole and Defendant, Suffolk County Sheriff's Office lacked the jurisdiction to bring this action as a parole violation, improperly detaining Plaintiff and depriving him of his federal and State civil and due process rights. In addition, the DOCCS and/or Division of Parole and Plaintiff's Parole Officer, Sabrina Hamlett or defendant, Suffolk County Sheriff's Office never put Plaintiff on notice that the special conditions of his parole remained in effect while he was detained in the Suffolk County correctional facility and/or jail. Moreover, fundamental due process rights permitted Plaintiff to present witnesses and documents at the pending parole violation hearing, including consulting with his co-defendant to prepare a defense and present him as a witness, especially since he was the subject of the alleged parole violation. Therefore, the alleged parole violation was not valid or lawful and Plaintiff remained wrongfully confined and/or detained by Defendants in violation of his civil and due process rights under the United States and New York State Constitutions. Again, Plaintiff was further targeted by the Defendants and DOCCS as a minority and repeatedly and systematically threatened, punished, victimized and denied his civil rights. Annexed hereto as Exhibit "8" is a copy of the transcript from the preliminary hearing for parole violation warrant #762686.

43. Subsequently, Plaintiff filed a Writ for Habeas Corpus which came before the Honorable Justice James Hudson on January 31, 2018. Prior to that, three Supreme Court Justices recused themselves from hearing Plaintiff's Writ of Habeas Corpus. The handling Assistant Attorney General, defendant, Laurie Pack, Esq was untimely in her opposition and an adjournment was granted. Pursuant to New York Civil Procedure and Practice Rules 7008(a)

when the Writ of Habeas Corpus is filed and served “the return shall consist of an affidavit to be served in the same manner as an answer in a special proceeding and filed at the time and place specified in the Writ, or, where the Writ is returnable forthwith, within twenty-four hours after its service.” In this case, the assigned Assistant Attorney General, Laurie Pack, intentionally did not file her response to Plaintiff’s Writ of Habeas Corpus until three weeks after the Writ was filed and not twenty-four hours as mandated by the law so that she could Judge shop and ensure that Plaintiff’s Writ of Habeas Corpus came before his sentencing Judge, specifically the Honorable Justice James Hudson. The Honorable Justice Hudson held that probable cause existed to sustain Plaintiff’s parole violation under warrant #762686, meeting with co-defendant, Robert Akre, and denied Plaintiff’s Writ of Habeas Corpus, further improperly depriving Plaintiff of his federal and State civil and due process rights and his freedom. Furthermore, the Honorable Justice James Hudson was the Plaintiff’s sentencing Judge and should have recused himself, especially since Plaintiff had previously filed a complaint against him to the Commissions of Judicial Conduct for threatening him in open Court to take a plea and after Plaintiff had filed a NY CPL 440 motion to set aside the sentence only thirty (30) days prior to the Writ of Habeas Corpus before said Judge. The actions described above were also motivated by Plaintiff’s race and skin color and his civil rights and equal right to due process were denied. Annexed hereto as Exhibit “9”, is a copy of the transcript from the hearing before Judge Hudson denying Claimant’s writ of habeas corpus.

44. On March 1, 2018, a final parole hearing was held before Preliminary Hearing Officer Mary Ross which subsequently sustained Plaintiff’s parole violation under warrant #762686. At that hearing, Plaintiff’s Parole Officer failed to appear despite being served with a subpoena. This was the Parole Officer, specifically P.O. Sabrina Hamlette, that lodged the

alleged parole violations against Plaintiff. The preliminary hearing proceeded in violation of Plaintiff's due process rights. Plaintiff's right to confront and cross-examine the complaining witness (P.O. Sabrina Hamlett) was illegally and improperly denied. A proper foundation was not established to accept the parole violation into the record, as the complaining witness was not present. Evidence was introduced at this preliminary hearing that was the fruit of the poisonous tree and violated double jeopardy laws, more specifically, illegal evidence from a prior parole hearing which was reversed by Writ of Habeas Corpus (see exhibits "5" and "7"). The Administrative Law Judge did not operate in accordance with the law and continued with a hearing that was not neutral and fair, reaching a decision which violated Plaintiff's parole and deprived him of his freedom proving that the Administrative Law Judge ("ALJ") was not a neutral and fair hearing officer, and further violating Plaintiff's civil and due process rights protected by the United States and New York State Constitutions. Plaintiff's records were submitted at the hearing without proper subpoena as misrepresented by the Division of Parole. Plaintiff was sent to Downstate Correctional Facility and then transferred to Livingston Correctional Facility where he was harassed by a Correction's Officer and retaliated against as evidenced by the issuance of three misbehavior reports against Plaintiff after he filed charges against said Correction's Officer, which was Plaintiff's right. Plaintiff was then transferred to Woodbourne Correctional Facility. The actions described above were motivated by Plaintiff's race and skin color and his civil rights and equal right to due process were denied. Annexed hereto as Exhibit "10" and Exhibit "11" respectively are copies of the hearing transcript before Administrative Law Judge Ross sustaining the parole detainer warrant and page 6 of the New York State – DOCCS Community Supervision Parolee Report Chrono Report dated December 3, 2018 and specifically entries dated December 4, 2017.

45. In August of 2019, Plaintiff filed a Writ of Habeas Corpus in Suffolk County that was transferred to Sullivan County by Suffolk County Judge Linda Kevins because she refused to have the Plaintiff produced and she was one of the Judges to have recused herself in 2018. On October 2, 2019, the Honorable Justice Stephan G. Schick granted Plaintiff's Writ of Habeas Corpus, dismissed Plaintiff's parole violations under warrant #762686, and held: "This Court having found that the violation of Parole charges against Warren Ovalle were brought in bad faith and were an abuse of discretion." During oral arguments, Honorable Justice Stephan G. Schick addressed the Division of Parole's actions, which Plaintiff presently claims deprived him of his civil and due process rights protected by the United States and New York State Constitutions and all applicable federal and state civil right statutes, including but not limited to, "judge shopping" and "having a second bite at the same apple with a different judge with a different ruling". In addition, the New York State Attorney General Office and the assigned Assistant Attorney General, Laurie Pack, Esq., committed prosecutorial misconduct by not disclosing evidence to plaintiff or his legal counsel that showed that the same parole violations charged in his original parole violation detainer warrant (#762538), which were dismissed when the Honorable Justice Santorelli granted Plaintiff's Writ of Habeas Corpus, were charged again a second time in Plaintiff's parole violation detainer warrant (#762686) by the DOCCS and the New York State Attorney General's Office and were subsequently heard by the Honorable Justice James Hudson. As set forth above, Plaintiff was wrongfully confined to County and State Correctional Facilities from September 18, 2017, through October 11, 2019, deprived of his Constitutional rights, liberty and happiness and caused to endure physical pain and suffering, emotional trauma and suffering, including fear, embarrassment, humiliation, emotional distress, frustration, extreme hardship and inconvenience, depression and anxiety with no legal basis.

Annexed hereto as Exhibits “12” and “13” are copies of the Honorable Justice Stephan G. Schick Order dated October 2, 2019, and the transcript from the hearing and/or oral argument that generated that order.

46. At all times during the events described above, the defendants were engaged in a joint venture with New York State DOCCS and/or Division of Parole, the New York State Attorney General’s Office and Suffolk County Sheriff’s Office and formed an agreement to violate Plaintiff’s rights. The Defendants and New York State DOCCS and/or Division of Parole and the New York State Attorney General’s Office and their respective employees, agents and/or servants assisted each other in performing the various acts described above and lent their physical presence and support and the authority of their office to each other during these events in violation of Plaintiff’s civil and due process rights afforded by the United State and New York State Constitutions and other applicable statutes and case law. The above-referenced defendants and their employees, agents and/or servants acted in concert to violate Plaintiff’s civil and due process rights, and implemented systematic racism in further violation of Plaintiff’s Constitutional rights. Alternatively, Defendants, Suffolk County and the Suffolk County’s Sheriff’s Office failed to intervene in the obviously illegal actions of New York State DOCCS and/or Division of Parole.

47. During all the events described above, Defendants acted maliciously with the intent to injure Plaintiff and/or with reckless disregard of Plaintiff’s safety, health, and the rights afforded Plaintiff under the United States and New York State Constitutions.

**AS AND FOR A FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS
(42 USC §1981, §1983, §1985, §1988)**

48. Plaintiff repeat, reallege and incorporate by reference paragraphs “1” through “47” of the Complaint as if set forth at length herein.

49. At all times relevant in this matter, all Defendants its employees, agents, and/or servants, individually, and in their official capacities, acting under color of law, deprived Plaintiff of his civil, constitutional and statutory rights, in violation of the United States Constitution, the Fourth and Fourteenth Amendments to the United States Constitution and in violation of 42 U.S.C. §1981, §1983, §1985, §1988 and 28 U.S.C. § 1343.

50. All defendants falsely confined, detained, imprisoned, Plaintiff and failed to intervene in each other's obviously illegal actions.

51. All defendants violated Plaintiff's civil and due process rights due to his race, color and/or national origin and for other reasons set forth in detail above, including filing false parole violations, not complying with Court Orders and abiding by the United States Constitution and all applicable federal statutes and laws.

52. That as a sole, direct and proximate result of the foregoing, Plaintiff has been injured and sustained damages.

**AS AND FOR A SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS,
(Article 1 Section 5, 6 and 12 of the New York State Constitution)**

53. Plaintiff repeat, reallege and incorporate by reference paragraphs "1" through "52" of the Complaint as if set forth at length herein.

54. At all times relevant in this matter, all defendants, its employees, agents, and/or servants, individually, and in their official capacities, acting under color of law, deprived Plaintiff of his civil, constitutional and statutory rights, in violation of the New York State Constitution, Article 1 Section 5, 6 and 12 of the New York State Constitution, and all other applicable statutes, laws, codes, sections.

55. All defendants falsely confined, detained, imprisoned, Plaintiff and failed to intervene in each other's obviously illegal actions.

56. Defendants failed to release plaintiff pursuant to the Honorable Justice Santorelli's Court Order and improperly detained him in violation of his civil rights and due process rights.

57. All defendants violated Plaintiff's civil and due process rights due to his race, color and/or national origin and for other reasons set forth in detail above, including filing false parole violations, not complying with Court Orders and abiding by the New York State Constitution and all applicable state statutes and laws.

58. That as a sole, direct and proximate result of the foregoing, Plaintiff has been injured and sustained damages.

**AS AND FOR A THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS,
(42 USC § 1985(3) - Conspiracy)**

59. Plaintiff repeat, reallege and incorporate by reference paragraphs "1" through "58" of the Complaint as if set forth at length herein.

60. At all times relevant in this matter, defendant, Suffolk County Sheriff's Office and John Does #1-10, its employees, agents, and/or servants, individually, and in their official capacities, conspired with each other and State agencies, including New York State DOCCS and Attorney General's Office, for the purpose of depriving, either directly or indirectly, Plaintiff of equal protection of the laws and/or equal protections, privileges and/or immunities under the laws, and said conspirators caused or committed acts in furtherance of the object of the conspiracy depriving Plaintiff of equal protection under the law and due process and depriving him of his civil rights or privileges as a U.S. Citizen, including, freedom and happiness.

61. All defendants violated Plaintiff's civil and due process rights due to his race, color and/or national origin and for other reasons set forth in detail above, including filing false parole violations, not complying with Court Orders and abiding by the United States Constitution and all applicable statutes and laws.

62. That as a sole, direct and proximate result of the foregoing, Plaintiff has been injured and sustained damages.

**AS AND FOR A FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS,
(Municipal and Supervisory liability)**

63. Plaintiff repeat, reallege and incorporate by reference paragraphs "1" through "62" of the Complaint as if set forth at length herein.

64. At all times relevant in this matter, all defendants, their employees, agents, and/or servants, individually, and in their official capacities, intentionally and/or carelessly, recklessly, and/or negligently conducted and performed their legal duties and responsibilities and failed to follow required United States and New York State due process laws, policies and procedures, including in part, filing false parole violations, failing to release Plaintiff from a county jail as directed by the Court and Court Order, intentionally and wrongfully confining and detaining Plaintiff, transferring and detaining Plaintiff at the Riverhead Correctional Facility for over a month and upgrading his classification to the highest security status with no proper basis and with no evidence that Plaintiff committed any criminal or improper act, in threatening and intimidating Plaintiff while illegally and improperly detaining him at the Riverhead Correctional Facility, in allowing Plaintiff to have visitors at county jails and/or correctional facilities with an individual that allegedly violated the conditions of his parole, in providing personal and confidential documents at Plaintiff's parole hearings improperly and without proper subpoena as well as other violations of proper policy and procedure.

65. All defendants are liable for the damages suffered by Plaintiff as a result of the conduct of their employees, agents and/or servants, in that, after learning of their employees and other participants' violation of Plaintiff's constitutional rights, they failed to correct the wrong;

All defendants have created and allowed a policy or custom under which unconstitutional practices occurred and permitted such policies or customs to continue. And they have been grossly negligent in managing subordinates who caused the unlawful conditions or events. Defendants have been alerted to the wrongful detention and/or confinement and/or systematic racism by its employees or other agencies, but has nevertheless exhibited deliberate indifference to such wrongful detention and/or confinement; that intentional indifference caused the violation of Plaintiff's constitutional rights in this case.

66. The aforesaid event was not an isolated incident. Defendant, Suffolk County, has been aware for some time, from Notices of Claim, lawsuits and complaints filed with agencies, Including the Internal Affairs Department of the Suffolk County Police Department and Sheriff's Office, and the DOCCS and New York Attorney General's Office have been aware for some time, from Verified Claims and lawsuits and administrative and judicial rulings, that a disturbing amount of officers use excessive force, wrongfully detain and/or confine, bring charges against inmates with no legal basis, and fail to intervene in and report the obviously illegal actions of their fellow officers. Nevertheless, Defendants have allowed policies and procedures that allow the aforementioned to persist.

67. For example, The Justice Lab analyzed data on all people detained in New York City jails, and compared that data to consensus data on the demographic makeup of the city. Over fifty-one (51%) percent of all people under parole supervision by NYS DOCCS reside in New York City. Their analysis indicated that Black people are detained for alleged parole violations in New York City jails at a rate 12 times higher than that for white people. And that Latin people are detained for alleged parole violations at roughly 4 times the rate of white people. The impact of being on parole for people being charged with new offenses, these inequities became even larger.

Among people in New York City jails who are on parole and are also being held for a new charge, a stunning ninety-one (91%) percent were people of color. This disparity is even more pronounced for people charged with low-level crimes. Among those held for alleged misdemeanor offenses who were also on parole, ninety-nine (99%) percent were people of color. Black people are incarcerated for technical violations of parole in New York State prisons at 4.99 times the rate of white people, and Latin people are thirty (30%) percent more likely than white people to be incarcerated for a technical parole violation. As with rates of supervision, these inequities were more severe for men, Black men are 5.66 times as likely as white men to be incarcerated for a technical parole violation, and Latino men were thirty-eight (38%) percent more likely to be in New York State prison for a technical parole violation than their white counterparts. See, *Racial Inequities in New York Parole Supervision* by Kendra Bradner and Vincent Schiraldi of the Columbia University, Justice Lab.

68. All defendants violated Plaintiff's civil and due process rights due to his race, color and/or national origin and for other reasons set forth in detail above, including filing false parole violations, not complying with Court Orders and not abiding by the United States Constitution and all applicable statutes and laws.

69. Defendants are aware that all of the aforementioned has resulted in violations of parolees' constitutional rights. Despite, such notice, Defendants have failed to take corrective action. This failure and these policies caused defendants' officers and relevant employees in the present case to violate Plaintiff's civil rights, without fear of reprisal.

70. Plaintiff has been damaged as a result of the deliberate indifference of the Defendants, to the constitutional rights of minorities.

71. Defendants are liable for the damages suffered by Plaintiff as a result of the conduct of their employees, agents, servants, in that, after learning of their employees' violation of Plaintiff's

constitutional rights, they failed to remedy the wrong; Defendants have created a policy or custom under which unconstitutional practices occurred and allowed such policies or customs to continue, and they have been grossly negligent in managing and supervising subordinates who caused the unlawful condition or event. Defendants have been alerted to the regular and systematic violations of minority parolees' civil and constitutional rights, but have nevertheless exhibited deliberate indifference to such policies and customs; the deliberate indifference caused the violation of Plaintiff's constitutional and civil rights in this case.

72. That as a sole, direct and proximate result of the foregoing, Plaintiff has been injured and sustained damages.

**AS AND FOR A FIFTH CAUSE OF ACTION AGAINST ALL DEFENDANTS,
(Wrongful Confinement and/or Imprisonment)**

73. Plaintiff repeat, reallege and incorporate by reference paragraphs "1" through "72" of the Complaint as if set forth at length herein.

74. At all times relevant in this matter, all Defendants, and their employees, agents, and/or servants, individually, and in their official capacities, acting under color of law, wrongfully confined, detained and/or imprisoned Plaintiff against his will and without his consent and without legal basis or valid legal process and in violation of a Court Order and deprived Plaintiff of his liberty, happiness and freedom in violation of Plaintiff's rights under the United States and New York State Constitutions.

75. Defendants falsely confined, detained, imprisoned Plaintiff and failed to intervene in each other's obviously illegal actions.

76. All defendants violated Plaintiff's civil and due process rights due to his race, color and/or national origin and for other reasons set forth in detail above, including filing false parole violations, not complying with Court Orders and abiding by the United States and New York State

Constitutions and all applicable statutes and laws.

77. Plaintiff was conscious and fully aware of the illegal and false confinement and/or detention.

78. That as a sole, direct and proximate result of the foregoing, Plaintiff has been injured and sustained damages.

**AS AND FOR A SIXTH CAUSE OF ACTION AGAINST ALL DEFENDANTS
(Negligent hiring, supervision and retention)**

79. Plaintiff repeat, reallege and incorporate by reference paragraphs "1" through "78" of the Complaint as if set forth at length herein.

80. All defendants owed a duty of care to plaintiff to follow the law, as well as its own proper policies, procedures and customs and prevent the loss of liberty and mental abuse sustained by Plaintiff.

81. Defendants owed a duty of care to Plaintiff because under the same or similar circumstances a reasonably prudent person should have anticipated an injury to plaintiff, including the loss of liberty, or those in a position similar to plaintiff's as a consequence of this conduct.

82. Upon information and belief, Defendants' Officers and relevant employees were incompetent and unfit for their positions.

83. Upon information and belief, Defendants knew or should have known through exercise of reasonable diligence that their Officers and relevant employees were potentially dangerous, derelict of their duties and previously failed in properly performing their duties and abiding by defendants' proper policies, procedures, and customs.

84. Defendants' negligence in hiring and retaining the Officers and relevant employees proximately caused plaintiff's damages.

85. Defendants' negligence in supervising and policing the Officers and relevant

employees proximately caused plaintiff's damages.

86. As a result of Defendants negligent hiring, supervision and retention of the Officers and relevant employees plaintiff sustained the damages described above.

**AS AND FOR A SEVENTH CAUSE OF ACTION AGAINST ALL DEFENDANTS,
(Negligent infliction of emotional harm and distress)**

87. Plaintiff repeat, reallege and incorporate by reference paragraphs "1" through "86" of the Complaint as if set forth at length herein.

88. At all times relevant in this matter, Defendants, their employees, agents, and/or servants, individually, and in their official capacities, caused Plaintiff to sustain severe emotional and mental distress, physical harm and injury, psychological trauma, shock, horror, anxiety, depression, post-traumatic stress disorder and other mental disorders, legal expenses as a direct, sole and proximate result of their illegal, outrageous and wrongful acts as described above, including but not limited wrongful confinement and/or imprisonment.

89. That Plaintiff's injuries and damages were caused solely by reason of the defendants' negligent and/or careless conduct, as stated herein, without any fault or negligence on the part of Plaintiff contributing thereto.

90. By reason of the foregoing, plaintiff has been injured and sustained monetary damages.

**AS AND FOR AN EIGHTH CAUSE OF ACTION AGAINST ALL DEFENDANTS,
(Intentional infliction of emotional harm and distress)**

91. Plaintiff repeat, reallege and incorporate by reference paragraphs "1" through "90" of the Complaint as if set forth at length herein.

92. At all times relevant in this matter, Defendants, their employees, agents, and/or servants, individually, and in their official capacities, caused Plaintiff to sustain severe emotional

and mental distress, physical harm and injury, psychological trauma, shock, horror, anxiety, depression, post-traumatic stress disorder and other mental disorders, legal expenses as a direct, sole and proximate result of their illegal, outrageous and wrongful acts as described above, including but not limited wrongful confinement and/or imprisonment.

93. That Plaintiff's injuries and damages were caused solely by reason of the defendants' extreme and outrageous conduct with the intent to cause, or disregard of a substantial probability of causing, severe emotional distress to Plaintiff.

94. That Plaintiff's injuries and damages were caused solely by reason of the defendants' intentional and/or reckless conduct, as stated herein, without any fault on the part of Plaintiff contributing thereto.

95. By reason of the foregoing, plaintiff has been injured and sustained monetary damages.

**AS AND FOR A NINTH CAUSE OF ACTION AGAINST ALL DEFENDANTS,
(Negligence)**

96. Plaintiff repeat, reallege and incorporate by reference paragraphs "1" through "95" of the Complaint as if set forth at length herein.

97. At all times relevant in this matter, Defendants their employees, agents, and/or servants, individually, and in their official capacities, acting under color of law, were negligent in performing its duties and responsibilities and in complying with a Court Order resulting in injury and damages to Plaintiff, including but not limited to, deprivation of freedom, severe pain and suffering, severe and permanent emotional and mental distress and other damages.

98. That Plaintiff's injuries and damages were caused solely by reason of the defendants' negligent and/or careless conduct, as stated herein, without any fault or negligence on the part of Plaintiff contributing thereto.

99. By reason of the foregoing, plaintiff has been injured and sustained monetary damages.

JURY DEMAND

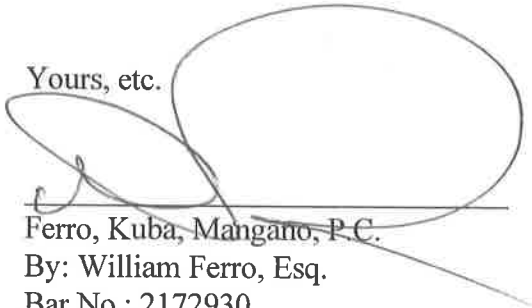
100. Plaintiff demands a trial by jury.

WHEREFORE, Plaintiff demand judgment against Defendants, severally and jointly, on all causes of action as follows:

- A. In favor of Plaintiff in an amount to be determined by a jury for each of Plaintiff's causes of action;
- B. Awarding Plaintiff punitive damages in an amount to be determined by a jury;
- C. Awarding Plaintiff attorney fees pursuant to 42 U.S.C §1988, costs and disbursements of this action; and
- D. Granting such other and further relief as this Court deems just and proper.

Dated: Hauppauge, New York
September 27, 2021

Yours, etc.



Ferro, Kuba, Mangano, P.C.
By: William Ferro, Esq.
Bar No.: 2172930
Attorney for Plaintiff
Warren A. Ovalle
825 Veterans Highway
Hauppauge, New York 11788
(631) 581-9494
WFerro@ferrokuba.com

EXHIBIT 1

STATE OF NEW YORK
DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION (DOCCS)
CERTIFICATE OF RELEASE TO POST-RELEASE SUPERVISION

DETERMINATE SENTENCE - POST-RELEASE

DETERMINATE SENTENCE:

NYSID: 09347560-1 DUNY10-R-0096

VALLE, WALTER, now confined in JAIL who was convicted of Article 2 (b) and sentenced in the county of Suffolk at a term of the County Court, Judge Hudson, presiding on the 21st day of January, 2010, for the term of 0-2-0-0 (the minimum term of such sentence expires on the 13th day of March 2015) has agreed to abide by the conditions to which (he) (she) has signed (his) (her) name below, and is hereby released by virtue of the authority conferred by New York State Law.

VALLE, WALTER, is additionally subject to a period of 5-0-0 years/months Post-Release Supervision, which will commence on the release date of 3/13/15 and (he) (she) will be under the legal jurisdiction of the Department of Corrections and Community Supervision until the Post-Release Supervision Maximum Expiration (PRSM) date of 3/13/2020.

Post-Release Supervision Period (years/months): 5-0-0.

Post-Release Supervision Maximum Expiration Date: 3/13/2020.

Approved Residence Address: 15 East Locust St.

City/State/Zip: Central Islip, NY 11723

Command Center Address: 314 West 40th St.
New York, NY 10018
Parole Officer's office hours and on weekends, call (212) 239-8158. Command Center staff will assist you.

City/State/Zip:

Special Instructions:

Within 24 hours of release, report to Suffolk AG, 880 Johnson Ave., Babylon, NY 11714. P. J. Torres.

Approved Field Office Address: Suffolk Area Office

City/State/Zip: 880 Johnson Ave.
Babylon, NY 11714
(631) 218-5070

Name of Parole Officer: P. J. Torres / SPO Murray

I, VALLE, WALTER, voluntarily accept Post-Release Supervision. I fully understand that my person, residence and property are subject to search and inspection. I understand that Post-Release Supervision is defined by these Conditions of Release and all other conditions that may be imposed upon me by the Board of Parole or its representatives. I understand that my violation of these conditions may result in the revocation of my release.

CONDITIONS OF RELEASE

- I will proceed directly to the area in which I have been released, and, within twenty-four hours of my release, make my arrival report to the Community Supervision Office indicated below, unless other instructions are designated on my release document.
- I will make office and/or written reports as directed.
- I will not leave the State of New York or any other state to which I am released or transferred, or any area defined in writing by my Parole Officer without permission.
- I will permit my Parole Officer to visit me at my residence and/or place of employment and I will permit the search and inspection of my person, residence and property. I will discuss any proposed changes in my residence, employment or program status with my Parole Officer. I understand that I have an immediate and continuing duty to notify my Parole Officer of any changes in my residence, employment or program status when circumstances beyond my control make prior discussion impossible.
- I will reply promptly, fully and truthfully to any inquiry or communication by my Parole Officer or other representative of the Department of Corrections and Community Supervision.
- I will notify my Parole Officer immediately any time I am in contact with or arrested by any law enforcement agency. I understand that I have a continuing duty to notify my Parole Officer of such contact or arrest.
- I will not be in the company of or fraternize with any person I know to have a criminal record or whom I know to have been adjudicated a Youthful Offender except for occasional encounters in public places, work, school or in any other instance with the permission of my Parole Officer.
- I will not behave in such a manner as to violate the provisions of any law to which I am subject which provide for a penalty of imprisonment, nor will my behavior threaten the safety or well-being of myself or others.
- I will not own, possess, or purchase any deadly weapon as defined in the Penal Law or any dangerous knife, club, razor, stiletto, or imitation pistol. In addition, I will not own, possess or purchase any instrument readily capable of causing physical injury without a satisfactory explanation for ownership, possession or purchase.
- In the event that I leave the jurisdiction of the State of New York, I hereby waive my right to seek extradition to the State of New York from any state in the Union and from any territory or country outside the United States. This waiver shall be in the full force and effect until I am discharged from Parole or Conditional Release. I fully understand that I have the right under the Constitution of the United States and under law to contest an effort to extradite me from another state and return me to New York, and I freely and knowingly waive this right as a condition of my Parole or Conditional Release.
- I will not own or possess any drug paraphernalia or use or possess any controlled substance.
- Special Conditions:

Waiver to continuation Point 3010215

- I will fully comply with the instructions of my Parole Officer and obey such special additional written conditions as he or she, a Member of the Board of Parole or an authorized representative of the Department of Corrections and Community Supervision, may impose.

I hereby certify that I have read and that I understand the foregoing conditions of my release and that I have received a copy of this Certificate of Release to Post-Release Supervision.

Signed this 17th day of March 2015.

Signature: [Signature] Date: 3/13/15

NYSDOCCS-7225022
Area: CFF

COPY TO OFFENDER
COPY TO FACILITY

EXHIBIT 2

New York State - DOCS
Community Supervision
SPECIAL CONDITIONS OF RELEASE TO PAROLE SUPERVISION

Name: OVALLE, WARREN A
Date of Release: 03/19/2015

Page: 1
NYSID: 07347560J
Supervision Maximum: 03/17/2020

I, OVALLE, WARREN A, acknowledge that the following Special Conditions have been imposed upon me and that these Special Conditions will remain in effect until the termination of my legal period of supervision 03/17/2020 unless otherwise amended, in writing, by the Department of Corrections and Community Supervision.

I WILL NOT have contact with the following individual(s) Robert (36)
This means that I WILL NOT attempt to meet in person, communicate by letter, telephone, electronic device (i.e. computer) or through a third party, or via other means, the above individual(s) without knowledge and permission of my Parole Officer.

I WILL NOT have contact with the following individual(s) Vicki (37)
This means that I WILL NOT attempt to meet in person, communicate by letter, telephone, electronic device (i.e. computer) or through a third party, or via other means, the above individual(s) without knowledge and permission of my Parole Officer.

I WILL NOT have contact with the following individual(s) (38)
This means that I WILL NOT attempt to meet in person, communicate by letter, telephone, electronic device (i.e. computer) or through a third party, or via other means, the above individual(s) without knowledge and permission of my Parole Officer.

I WILL remain in the geographic confines of the county(s) of Saratoga (44)
If I travel outside of the above mentioned county(s), I will obtain a travel pass from my Parole Officer granting permission for such travel.

Other Conditions: (50)

I WILL remain at my approved residence from 9pm to 7am (61)
seven days a week. Exceptions to my curfew may be permitted with PRIOR approval from my Parole Officer.

I WILL comply fully with the implementation of the Electronic Monitoring Program. I WILL NOT tamper with any equipment and will ensure that all equipment is returned to the Department of Corrections and Community Supervision upon completion. (63)

I WILL live and remain at my approved residence and have no unauthorized visitors, guests or others without the prior approval and authorization of my Parole Officer. (68)

Release Initials: WE Witness Initials: EE Date: 11/02/2016

EXHIBIT 3

STATE OF NEW YORK-EXECUTIVE DEPARTMENT
DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

VIOLATION OF RELEASE REPORT

Warrant Issued x No Warrant Issued

Name: Ovalle, Warren A.	Date Released: 06/09/2015
NYSID NO: 09347560J	Max. Expiration: 03/17/2020
Institution: Marcy C.F	Date of Warrant: 09/18/2017
DIN NO: 10R0095	Warrant No: 162538
Date of Birth: 06/08/1977	Date Enforced: 9/18/2017
Offense: Assault 2nd, ATT Robbery 2nd	Location: SCJ
Sentence: 00-00/06-00, 01-00/03-00	

Delinquency Date: 5/26/2017

Since his/her release, the above named individual has violated the Conditions of Release in the following manner:

Charge#1: Warren A. Ovalle violated rule # 5 of the conditions governing his release in that he failed to reply truthful to an inquiry by his Parole Officer on 9/18/17 at approximately 6:15am when he denied having a cell phone.

Charge#2: Warren A. Ovalle violated rule # 5 of the conditions governing his release in that he failed to reply truthful to an inquiry by his Parole Officer on 9/18/17 at approximately 6:15am when he denied having any contact with his co-defendant, Robert Akre.

Charge#3: Warren A. Ovalle violated rule # 7 of the conditions governing his release in that on 9/18/17 at approximately 6:15am in the vicinity of 15 Locust Street, Central Islip N.Y. he was in the company of his co-defendant, Robert Akre, as person known to him as having a criminal record.

Charge#4: Warren A. Ovalle violated rule # 9 of the conditions governing his release in that on 9/18/17 at approximately 6:15am in the vicinity of 15 Locust Street, Central Islip N.Y. he was found to be in possession of a metal balman knife.

Charge#5: Warren A. Ovalle violated rule # 9 of the conditions governing his release in that on 9/18/17 at approximately 6:15am in the vicinity of 15 Locust Street, Central Islip N.Y. he was found to be in possession of a two large Rambo hunting survival knives.

Charge#6: Warren A. Ovalle violated rule # 9 of the conditions governing his release in that on 9/18/17 at approximately 6:15am in the vicinity of 15 Locust Street, Central Islip N.Y. he was found to be in possession of two metal razor.

Charge#7: Warren A. Ovalle violated rule # 9 of the conditions governing his release in that on 9/18/17 at approximately 6:15am in the vicinity of 15 Locust Street, Central Islip N.Y. he was found to be in possession of a eight metal chinese dragon attack stars.

Charge#8: Warren A. Ovalle violated rule # 11 of the conditions governing his release in that on 9/18/17 at approximately 6:15am in the vicinity of 15 Locust Street, Central Islip N.Y. he was found to be in possession of a quantity controlled substances in of marijuana without proper medical authorization.

STATE OF NEW YORK-EXECUTIVE DEPARTMENT
DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

Name: Ovalle, Warren A. NYSID NO: 09347560J DIN NO: 10R0095
Warrant#: 0762538

Charge#9: Warren A. Ovalle violated rule # 11 of the conditions governing his release in that on 9/18/17 at approximately 6:15am in the vicinity of 15 Locust Street, Central Islip N.Y he was found to be in possession of a drug paraphenelia to wit: drug grinder without proper medical authorization.

Charge#10: Warren A. Ovalle violated rule # 13 of the conditions governing his release in that on 5/26/17 at approximately 5:23pm in the vicinity of 15 Locust Street, Central Islip N.Y he failed to comply with written instructions given to him on 11/02/16 by his parole officer directing that he do not have contact with Robert Akre.

Charge#11: Warren A. Ovalle violated rule # 13 of the conditions governing his release in that on 6/23/17 at approximately 2:50pm in the vicinity of Lowes Shopping Center located at 2150 Nesconset Highway, Stonybrook N.Y 11790, he failed to comply with written instructions given to him on 11/02/16 by his parole officer directing that he do not have contact with Robert Akre.

Charge#12: Warren A. Ovalle violated rule # 13 of the conditions governing his release in that on 7/18/17 at approximately 8:33pm in the vicinity of 15 Locust Street, Central Islip N.Y he failed to comply with written instructions given to him on 11/02/16 by his parole officer directing that he do not have contact with Robert Akre.

Charge#13: Warren A. Ovalle violated rule # 13 of the conditions governing his release in that on 7/19/17 at approximately 11:12am in the vicinity of 15 Locust Street, Central Islip N.Y he failed to comply with written instructions given to him on 11/02/16 by his parole officer directing that he do not have contact with Robert Akre.

Charge#14: Warren A. Ovalle violated rule # 13 of the conditions governing his release in that on 7/25/17 at approximately 5:10pm in the vicinity of 15 Locust Street, Central Islip N.Y he failed to comply with written instructions given to him on 11/02/16 by his parole officer directing that he do not have contact with Robert Akre.

Charge#15: Warren A. Ovalle violated rule # 13 of the conditions governing his release in that on 8/02/17 at approximately 5:41pm in the vicinity of 15 Locust Street, Central Islip N.Y he failed to comply with written instructions given to him on 11/02/16 by his parole officer directing that he do not have contact with Robert Akre.

Charge#16: Warren A. Ovalle violated rule # 13 of the conditions governing his release in that on 8/02/17 at approximately 5:57pm in the vicinity of 15 Locust Street, Central Islip N.Y he failed to comply with written instructions given to him on 11/02/16 by his parole officer directing that he do not have contact with Robert Akre.

Charge#17: Warren A. Ovalle violated rule # 13 of the conditions governing his release in that on 8/08/17 at approximately 2:35pm in the vicinity of 15 Locust Street, Central Islip N.Y he failed to comply with written instructions given to him on 11/02/16 by his parole officer directing that he do not have contact with Robert Akre.

State of New York - Executive Department
Department of Corrections and Community Supervision

Name: Ovalle, Warren A. NYSID NO: 09347560.J DIN NO: 1CR0095
Warrant#: 0762538

Charge#18: Warren A. Ovalle violated rule # 13 of the conditions governing his release in that on 8/28/17 at approximately 2:46pm in the vicinity of 15 Locust Street, Central Islip N.Y he failed to comply with written instructions given to him on 11/02/16 by his parole officer directing that he do not have contact with Robert Akre.

Charge#19: Warren A. Ovalle violated rule # 13 of the conditions governing his release in that on 8/28/17 at approximately 4:01pm in the vicinity of 15 Locust Street, Central Islip N.Y he failed to comply with written instructions given to him on 11/02/16 by his parole officer directing that he do not have contact with Robert Akre.

Charge#20: Warren A. Ovalle violated rule # 13 of the conditions governing his release in that on 8/29/17 at approximately 4:20pm in the vicinity of 15 Locust Street, Central Islip N.Y he failed to comply with written instructions given to him on 11/02/16 by his parole officer directing that he do not have contact with Robert Akre.

Charge#21: Warren A. Ovalle violated rule # 13 of the conditions governing his release in that on 8/08/17 at approximately 10:56am in the vicinity of 15 Locust Street, Central Islip N.Y he failed to comply with written instructions given to him on 11/02/16 by his parole officer directing that he do not have contact with Robert Akre.

Charge#22: Warren A. Ovalle violated rule # 13 of the conditions governing his release in that on 9/11/17 at approximately 12:48pm in the vicinity of 15 Locust Street, Central Islip N.Y he failed to comply with written instructions given to him on 11/02/16 by his parole officer directing that he do not have contact with Robert Akre.

Charge#23: Warren A. Ovalle violated rule # 13 of the conditions governing his release in that on 9/11/17 at approximately 1:04pm in the vicinity of 15 Locust Street, Central Islip N.Y he failed to comply with written instructions given to him on 11/02/16 by his parole officer directing that he do not have contact with Robert Akre.

State of New York - Executive Department
Department of Corrections and Community Supervision

Name: Ovalle, Warren A. NYSID NO: 09347560J DIN NO: 10R0095
Warrant#: 0762530

General Adjustment to Parole Supervision/ Current Violative Behavior

On 9/18/17 at approximately 6:05am, in the vicinity of 15 Locust Street Central Islip N.Y. Warren A. Ovalle violated rule # 5 of his board conditions of his release that he signed on 5/17/16 that states I he will reply promptly, fully and truthfully to any inquiry of or communication, by my parole officer or other representative of the Department of Corrections and Community Supervision. On 9/18/17 at approximately 6:05am at 15 Locust Street Central Islip N.Y. Warren A. Ovalle failed to reply truthful to an inquiry by his Parole Officer, when he was asked if he had gotten a cellphone yet. He replied by shaking his head no. On 9/18/17 at approximately 6:15am at 15 Locust Street Central Islip N.Y. Warren A. Ovalle was found to be in possession of at least six cell phones. PO confirmed that at least one of the six cellphones belonged to Warren A. Ovalle as evidence found confirmed PO Hamlette's name and number to have been saved in the contacts of the cellphone. On 9/18/17 at approximately 8:05am, in the vicinity of 15 Locust Street Central Islip N.Y. Warren A. Ovalle failed to reply truthful to an inquiry by his Parole Officer, when he denied having any contact with his co-defendant, Robert Akre. He said that he has not had any contact with Robert Akre since being in jail. On 9/18/17 at approximately 6:15am in the vicinity of 15 Locust Street Central Islip N.Y. Warren A. Ovalle's co-defendant was observed at the residence and to have fled out of the home upon PO Hamlette's arrival. Co-defendant Robert Akre was apprehended in the backyard of the residence and was observed to be in possession of a quantity of marijuana.

On 9/18/17 at approximately 6:05am in the vicinity of 15 Locust Street Central Islip N.Y. Warren A. Ovalle violated rule # 7 of his board conditions of release that he signed on 5/17/2016 that states I will not be in company of or fraternize with any person I know to have a criminal record or whom I know to have been adjudicated a youthful offender except for accidental encounters in public places, work, school or in other instance with the permission of my parole officer. On 9/18/17 at approximately 6:15am in the vicinity of 15 Locust Street Central Islip N.Y. Warren A. Ovalle's co-defendant Robert Akre was observed at the residence before he fled from the residence upon PO's arrival. On 9/18/17 at approximately 6:15am upon doing a search at 15 Locust Street Central Islip N.Y. in Warren A. Ovalle's common living area, Robert Akre's wallet, birth certificate and his car insurance identification card were found in the residence. Robert Akre's car insurance identification card was observed to have Warren A. Ovalle's address: 15 Locust Street Central Islip N.Y. listed as his place of residence.

On 9/18/17 at approximately 6:15am at 15 Locust Street Central Islip N.Y. Warren A. Ovalle violated rule # 9 of his board conditions of release that he signed on 5/17/2016 that state I will not own, possess, or purchase any shot gun, rifle, or firearm of any type without the written permission of my parole officer. I will not own, possess or purchase any deadly weapon as defined in the Penal Law or any dangerous knife, dirk, razor, stiletto or imitation pistol. In addition, I will not own, possess or purchase any instrument readily capable of causing physical injury without a satisfactory explanation for ownership, possession or purchase. On 9/18/17 at approximately 6:15am Warren A. Ovalle was found to be in possession of a metal batman knife at his residence located at 15 Locust Street Central Islip N.Y. The batman knife was found in his common living area in a drawer within a wallet that contained his driver's license. Warren A. Ovalle's mother also confirmed that the area in which the batman knife was found, to be his living area of the home. On 9/18/17 at approximately 6:15am Warren A. Ovalle was also found to be in possession of two large metal Randall hunting knives at his residence at 15 Locust Street Central Islip N.Y.

State of New York – Executive Department
Department of Corrections and Community Supervision

Name: Ovalle, Warren A. NYSID NO: 09347560J DIN NO: 10R0095
Warrant#: 0762538

General Adjustment to Parole Supervision/ Current Violative Behavior

The two large metal Rambo hunting knives that were also found in his common living area of which his mother confirmed to be his living area. On 9/18/17 at approximately 8:15am Warren A. Ovale was found to be in possession of two metal razors at his residence at 15 Locust Street Central Islip N.Y. The two metal razors were found in his common living area, that his mother confirmed to be his living area in the home. On 9/18/17 at approximately 6:15am Warren A. Ovale was found to be in possession of eight metal chinese dragon attack stars that were found in his draw with his wallet that had his driver's license, in his common living area. Warren A. Ovale's mother also confirmed the area in the residence, in which the eight metal chinese dragon attack stars were found, is his living area.

On 9/18/17 at approximately 6:15am in the vicinity of 15 Locust Street, Central Islip N.Y Warren A. Ovale violated rule # 11 of his board conditions of release that he signed on 5/17/16 that state I will not use or possess any drug paraphernalia or use or possess any controlled substances without prior medical authorization. On 9/18/17 at approximately 6:15am in the vicinity of 15 Locust Street, Central Islip N.Y Warren A. Ovale was in possession of a large quantity of marijuana. On 9/18/17 at approximately 6:15am in the vicinity of 15 Locust Street, Central Islip N.Y during a search of Warren A. Ovale's common living area, P.O. Hamlette observed two clear see through packages with a green leafy substance tightly wrapped separately that were hidden in the bottom of the closet of his common living area, that was tied and knotted in a grocery plastic bag. On 9/18/17 at approximately 6:15am in the vicinity of 15 Locust Street, Central Islip N.Y during a search of Warren A. Ovale's common living area, P.O. Hamlette observed that he was in possession drug paraphernalia, to wit a silver drug grinder that was observed to still have a green leafy substance in it and to a strong scent.

On 5/26/17 at approximately 5:23pm in the vicinity of 15 Locust Street, Central Islip N.Y Warren A. Ovale failed to comply with written instructions given to him on 11/02/16 by his parole officer directing that he do not have contact with Robert Akre. On 5/23/17 Parole Officer Mancarelli observed Warren A. Ovale and Robert Akre together at the residence located at: 15 Locust Street, Central Islip N.Y. On 6/23/17 at approximately 2:50pm Suffolk County Police Department, Detective Daniel Fandry observed Warren A. Ovale to be with his co-defendant, Robert Akre in a vehicle together with the license plate # HRB2259, in the vicinity of Lowe's Shopping Center located at 2150 Nesconset Highway, Stonybrook N.Y 11790. On 7/18/17 at approximately 6:33pm Parole Officer Mancarelli observed Warren A. Ovale with co-defendant, Robert Akre together at his residence at 15 Locust Street, Central Islip N.Y. On 7/19/17 at approximately 11:12am Parole Officer Mancarelli observed Warren A. Ovale with co-defendant, Robert Akre together at his residence at 15 Locust Street, Central Islip N.Y.

State of New York - Executive Department
Department of Corrections and Community Supervision

Name: Ovalle, Warren A. NYSID NO: 09347560J DIN NO: 10R0095
Warrant#: 0762538

General Adjustment to Parole Supervision/ Current Violative Behavior

On 7/25/17 at approximately 5:10pm Parole Officer Menzari observed Warren A. Ovalle with co-defendant, Robert Akre together at his residence at 15 Locust Street, Central Islip N.Y. On 8/02/17 at approximately 5:41pm Parole Officer Menzari observed co-defendant, Robert Akre to be standing at the gate of the Warren Ovalle's residence located at 15 Locust Street, Central Islip N.Y. On 8/02/17 at approximately 5:57pm Parole Officer Menzari observed Warren A. Ovalle with co-defendant, Robert Akre together at his residence at 15 Locust Street, Central Islip N.Y. On 8/04/17 at approximately 2:35pm Parole Officer Menzari observed Warren A. Ovalle with co-defendant, Robert Akre together at his residence at 15 Locust Street, Central Islip N.Y. On 8/28/17 at approximately 2:46pm Parole Officer Menzari observed Warren A. Ovalle with co-defendant, Robert Akre together at his residence at 15 Locust Street, Central Islip N.Y. On 8/28/17 at approximately 4:01pm Parole Officer Menzari observed Warren A. Ovalle with co-defendant, Robert Akre together at his residence at 15 Locust Street, Central Islip N.Y. On 8/29/17 at approximately 4:20pm Parole Officer Menzari observed Warren A. Ovalle with co-defendant, Robert Akre together at his residence at 15 Locust Street, Central Islip N.Y. On 9/08/17 at approximately 10:56am Parole Officer Menzari observed Warren A. Ovalle with co-defendant, Robert Akre together at his residence at 15 Locust Street, Central Islip N.Y. On 9/11/17 at approximately 12:48pm Parole Officer Menzari observed Warren A. Ovalle with co-defendant, Robert Akre get out of a vehicle together at the residence at 15 Locust Street, Central Islip N.Y. On 9/11/17 at approximately 1:04pm Parole Officer Menzari observed Warren A. Ovalle with co-defendant, Robert Akre get out of a vehicle together at the residence at 15 Locust Street, Central Islip N.Y.

Alternatives to Incarceration

Alternatives to incarceration cannot be considered at this time.

Present Status

On 9/18/17 warrant # 0762538 was issued and the subject was brought into custody. The subject is currently incarcerated at Riverhead Correctional Facility. The preliminary hearing will be 10/25/17 and the final hearing will be 11/15/17. There is a current stay away order of protection against the subject for the victim that will expire 1/7/2024.

Time On Parole: Years _____ Months _____ Days _____
Time Owed: Years _____ Months _____ Days _____

[Signature]

Parole Officer, (initials)

[Signature]
Date

Senior Parole Officer, (initials)

[Signature]

9/15/17
Date

State of New York - Executive Department
Department of Corrections and Community Supervision

Name: Ovalle, Warren A. NYSID NO: 09347560J DIN NO: 10R0095
Warrant#: 0762538

Case Summary

Warren A. Ovalle is a 40 year old male who released to NYS DOCCS after serving part of his sentences of 00-00/06-00 and 01-00/03-00 for the convictions of Assault 2nd and Attempted Robbery 2nd. Warren A. Ovalle was sentenced on 1/07/2010 in Suffolk County Court by Honorable Judge Huson. His maximum expiration date is 03/17/2020. The subject was released to New York State Department of Corrections and Community Supervision in 2002.

Instant Offense

In the instant offense Warren A. Ovalle in concert with the person described as the victim's brother and involved in what was described as a secret relationship by authorities, noticed a scratch on the 17 year old victim's back and accused him to be involved with a girl. The victim was handcuffed to a toilet and restrained for a period of more than 12 hours and was repeatedly whipped with a length of coaxial cable and had very little freedom. While Warren A. Ovalle and his co-defendant were asleep, the victim was able to free himself by breaking the toilet bracket.

Criminal History

Warren A. Ovalle's criminal history began 7/1/1997 at the age 20. He had 4 prior arrest yielding 1 felony conviction and 3 violations. His sanctions included probation, local jail and 1 state prison term. Violent offenses include attempted robbery 2nd 9/10/01 and I/O for assault 2nd. His criminal behavior pattern is violence and/or aggressive behavior with a weapons, propensity and evidences an emerging record of unlicensed operation of a motor vehicle and drug related activity. Warren A. Ovalle criminal history includes his Instant Offense.

Prior Parole History

The subject was released to New York State Department of Corrections and Community Supervision 5/28/02. The subject has had two prior parole violations. On 3/23/15 warrant # 0858297 was issued due to the Warren A. Ovalle failing to follow the directions of his assigned parole officer. On 9/27/16 was issued due to Warren A. Ovalle reportedly tampering with his GPS monitor device.

Drug/Alcohol History

The subject has a history of substance abuse usage and alcohol misuse with marijuana and alcohol being his drug of choice. While on NYS DOCCS, Warren A. Ovalle has been maintaining his sobriety. His last urine drug test was on 7/12/17 at the Suffolk County Area Office, 550 Johnson Avenue Bohemia NY 11716, and the results were negative. All other urine drug tests administered to him, had negative test results.

EXHIBIT 4

STATE OF NEW YORK - BOARD OF PAROLE
PRELIMINARY VIOLATION HEARING
DECISION AND SUMMARY

Adjourned Dates:

Warrant # _____

Name	NYSID Number	Hearing Date	Place
Hearing Officer: _____	_____	_____	_____
Attorney: _____	_____	_____	_____

1. List witnesses in order of appearance:

- ☐ Parole Officer _____
- ☐ Releasee _____
- ☒ Witnesses _____

2. List documents introduced into evidence:

- ☒ Notice of Violation Form 9011 dated: _____
- ☒ Certificate of Release to Parole Supervision dated: _____
- ☒ Violation of Release Report dated: _____
- ☐ Supplemental Violation of Release Report dated: _____
- ☐ Other _____

3. List reasons for determination and evidence relied on:

☒ I find there is probable cause that you violated the conditions of your release.

NOTE: ALL CHARGES MAY BE PRESENTED AT THE FINAL HEARING.

☐ I find there is not probable cause that you violated the conditions of your release.

Date _____ Signature _____ Hearing Officer

EXHIBIT 5

SUPREME COURT, COUNTY OF SUFFOLK
RIVERHEAD, NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK,
ex rel., WARREN A. OVALLE,

ORDER

Petitioner

Parole Warrant #762538

-against-

MICHAEL FRANCHI, WARDEN of the Suffolk County
Correctional Facility,

Respondent.

1. The legality of the above referenced parole violation detainer warrant #0762538 having been argued before this Court on November 29, 2017, and
2. This Court having found that there was not sufficient probable cause established at the Petitioner's preliminary parole revocation hearing to detain the Petitioner,

It is hereby ORDERED, that Parole Violation Detainer Warrant # 0762538 be immediately lifted.

DATED: November 30, 2017
Riverhead, New York

THE HON. JOSEPH A. SANTORELLI, J.S.C.

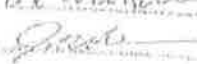
Date	11/30/17	Time	11:55 pm
Agency			
Rank	Judge		
Print Name	Joe Whelan		
Signature			

EXHIBIT 6

STATE OF NEW YORK-EXECUTIVE DEPARTMENT
DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

VIOLATION OF RELEASE REPORT

Warrant Issued ☒ No Warrant Issued ☐

Name: Ovalle, Warren A.
NYSID NO: 09347560J
Institution: Marcy C.F.
DIN NO: 10R0095
Date of Birth: 06/08/1977
Offense: Assault 2nd, ATT, Robbery 2nd
Sentence: 00-00/06-00, 01-00/03-00

Date Released: 06/09/2016
Max. Expiration: 03/17/2020
Date of Warrant: 11/30/2017
Warrant No: 762686
Date Enforced: 11/30/2017
Location: SCJ

Delinquency Date: 09/23/2017

Since his/her release, the above-named individual has violated the Conditions of Release in the following manner:

Charge#1: On September 23, 2017 at approximately 1:35pm while at the Suffolk County Correctional Facility located at 100 Center Drive South Riverhead N.Y 11901, Mr. Warren Ovalle violated rule #7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

Charge#2: On September 23, 2017 at approximately 1:35pm while at the Suffolk County Correctional Facility located at 100 Center Drive South Riverhead N.Y 11901, Mr. Warren Ovalle violated rule #13, of the conditions of his release in that he had contact with Mr. Robert Akre, without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

Charge#3: On September 23, 2017 at approximately 6:05pm while at the Suffolk County Correctional Facility located at 100 Center Drive South Riverhead N.Y 11901, Mr. Warren Ovalle violated rule #7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

Charge#4: On September 23, 2017 at approximately 6:05pm while at the Suffolk County Correctional Facility located at 100 Center Drive South Riverhead N.Y 11901, Mr. Warren Ovalle violated rule #13, of the conditions of his release in that he had contact with Mr. Robert Akre, without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

Charge#5: On September 24, 2017 at approximately 1:20PM while at the Suffolk County Correctional Facility located at 100 Center Drive South Riverhead N.Y 11901, Mr. Warren Ovalle violated rule #7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

STATE OF NEW YORK-EXECUTIVE DEPARTMENT
DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

Name: Ovalle, Warren A. NYSID NO: 09347560J DIN NO: 10R0095
Warrant#: 762686

Charge#6: On September 24, 2017 at approximately 1:20pm while at the Suffolk County Correctional Facility located at 100 Center Drive South Riverhead N.Y 11901, Mr. Warren Ovalle violated rule #13, of the conditions of his release in that he had contact with Mr. Robert Akre, without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

Charge#7: On September 25, 2017 at approximately 12:28pm while at the Suffolk County Correctional Facility located at 100 Center Drive South Riverhead N.Y 11901, Mr. Warren Ovalle violated rule # 7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

Charge#8: On September 25, 2017 at approximately 12:28pm while at the Suffolk County Correctional Facility located at 100 Center Drive South Riverhead N.Y 11901, Mr. Warren Ovalle violated rule #13, of the conditions of his release in that he had contact with Mr. Robert Akre, without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

Charge#9: On September 26, 2017 at approximately 10:36am while at the Suffolk County Correctional Facility located at 100 Center Drive South Riverhead N.Y 11901, Mr. Warren Ovalle violated rule # 7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

Charge#10: On September 26, 2017 at approximately 10:38pm while at the Suffolk County Correctional Facility located at 100 Center Drive South Riverhead N.Y 11901, Mr. Warren Ovalle violated rule #13, of the conditions of his release in that he had contact with Mr. Robert Akre, without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

Charge#11: On September 27, 2017 at approximately 9:42am while at the Suffolk County Correctional Facility located at 100 Center Drive South Riverhead N.Y 11901, Mr. Warren Ovalle violated rule # 7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

Charge#12: On September 27, 2017 at approximately 9:42am while at the Suffolk County Correctional Facility located at 100 Center Drive South Riverhead N.Y 11901, Mr. Warren Ovalle violated rule #13, of the conditions of his release in that he had contact with Mr. Robert Akre, without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

STATE OF NEW YORK EXECUTIVE DEPARTMENT
DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

Name: Ovalle, Warren A. NYSID NO: 00347560J DIN NO: 10R0095
Warrant#: 762686

Amended

Charge#13: On September 20, 2017 at approximately 9:08am while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule # 7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

Amended

Charge#14: On September 29, 2017 at approximately 9:06am while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule #13, of the conditions of his release in that he had contact with Mr. Robert Akre, without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

Amended

Charge#15: On September 29, 2017 at approximately 6:45pm while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule # 7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

Amended

Charge#16: On September 29, 2017 at approximately 6:45pm while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule #13, of the conditions of his release in that he had contact with Mr. Robert Akre, without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

Amended

Charge#17: On September 30, 2017 at approximately 10:02am while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule # 7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

Amended

Charge#18: On September 30, 2017 at approximately 10:02am while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule #13, of the conditions of his release in that he had contact with Mr. Robert Akre, without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

Amended

Charge#19: On September 30, 2017 at approximately 11:54 am while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule # 7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

STATE OF NEW YORK-EXECUTIVE DEPARTMENT
DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

Name: Ovalle, Warren A. NYSID NO: 09347560J DIN NO: 10R0095
Warrant#: 762688

Amended

Charge#20: On September 30, 2017 at approximately 11:54am while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule #13, of the conditions of his release in that he had contact with Mr. Robert Akre, without the knowledge or consent of his Parole Officer and contrary to a special condition imposed November 2, 2016.

Amended

Charge#21: On October 1, 2017 at approximately 10:49am while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule # 7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

Amended

Charge#22: On October 1, 2017 at approximately 10:49am while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule #13, of the conditions of his release in that he had contact with Mr. Robert Akre, without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

Amended

Charge#23: On October 2, 2017 at approximately 12:38pm while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule # 7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

Amended

Charge#24: On October 2, 2017 at approximately 12:38pm while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule #13, of the conditions of his release in that he had contact with Mr. Robert Akre, without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

Amended

Charge#25: On October 3, 2017 at approximately 9:45am while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule # 7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

STATE OF NEW YORK-EXECUTIVE DEPARTMENT
DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

Name: Ovalle, Warren A. NYSID NO: 09347560J DIN NO: 10R0095
Warrant#: 762696

Amended

Charge#26: On October 3, 2017 at approximately 9:45am while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule #13, of the conditions of his release in that he had contact with Mr. Robert Akre, without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

Amended

Charge#27: On October 4, 2017 at approximately 9:36am while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule # 7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

Amended

Charge#28: On October 4, 2017 at approximately 9:36am while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule #13, of the conditions of his release in that he had contact with Mr. Robert Akre, without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

Amended

Charge#29: On October 5, 2017 at approximately 11:27am while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule # 7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

Amended

Charge#30: On October 5, 2017 at approximately 11:27am while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule #13, of the conditions of his release in that he had contact with Mr. Robert Akre, without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

Amended

Charge#31: On October 6, 2017 at approximately 9:58am while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule #7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

STATE OF NEW YORK-EXECUTIVE DEPARTMENT
DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

Name: Ovalle, Warren A. NYSID NO: 09347560J DIN NO: 10R0095
Warrant#: 762686

Amended

Charge#32: On October 6, 2017 at approximately 9:58am while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule #13, of the conditions of his release in that he had contact with Mr. Robert Akre, without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

Amended

Charge#33: On October 7, 2017 at approximately 11:30am while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule # 7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

Amended

Charge#34: On October 7, 2017 at approximately 11:30am while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule #13, of the conditions of his release in that he had contact with Mr. Robert Akre, without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

Amended

Charge#35: On October 8, 2017 at approximately 11:06am while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule # 7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

Amended

Charge#36: On October 8, 2017 at approximately 11:06am while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule #13, of the conditions of his release in that he had contact with Mr. Robert Akre, without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

Amended

Charge#37: On October 8, 2017 at approximately 3:10pm while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule # 7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

STATE OF NEW YORK-EXECUTIVE DEPARTMENT
DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

Name: Ovalle, Warren A.
Warrant#: 762686

NYSID NO: 09347560J

DIN NO: 10R0095

Amended

Charge#39: On October 8, 2017 at approximately 3:10pm while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y. 11980, Mr. Warren Ovalle violated rule #13, of the conditions of his release in that he had contact with Mr. Robert Akre, without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

Amended

Charge#39: On October 9, 2017 at approximately 9:02am while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y. 11980, Mr. Warren Ovalle violated rule # 7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

Amended

Charge#40: On October 9, 2017 at approximately 9:02am while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y. 11980, Mr. Warren Ovalle violated rule #13, of the conditions of his release in that he had contact with Mr. Robert Akre, without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

Amended

Charge#41: On October 10, 2017 at approximately 10:06am while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y. 11980, Mr. Warren Ovalle violated rule # 7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

Amended

Charge#42: On October 10, 2017 at approximately 10:06am while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y. 11980, Mr. Warren Ovalle violated rule #13, of the conditions of his release in that he had contact with Mr. Robert Akre, without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

Charge#43: On October 10, 2017 at approximately 2:30pm while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y. 11980, Mr. Warren Ovalle violated rule # 7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

Charge#44: On October 10, 2017 at approximately 2:30pm while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y. 11980, Mr. Warren Ovalle violated rule # 13, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

STATE OF NEW YORK EXECUTIVE DEPARTMENT
DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

Name: Ovalle, Warren A.
Warrant#: 782686

NYSID NO: 09347560J

DIN NO: 10R0095

Amended

Charge#45: On October 11, 2017 at approximately 12:08pm while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y. 11980, Mr. Warren Ovalle violated rule # 7, c: the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

Amended

Charge#46: On October 11, 2017 at approximately 12:08pm while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y. 11980, Mr. Warren Ovalle violated rule #13, of the conditions of his release in that he had contact with Mr. Robert Akre, without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

Amended

Charge#47: On October 12, 2017 at approximately 10:19am while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y. 11980, Mr. Warren Ovalle violated rule # 7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

Amended

Charge#48: On October 12, 2017 at approximately 10:19am while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y. 11980, Mr. Warren Ovalle violated rule #13, of the conditions of his release in that he had contact with Mr. Robert Akre, without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

Amended

Charge#49: On October 13, 2017 at approximately 11:41am while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y. 11980, Mr. Warren Ovalle violated rule # 7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

Amended

Charge#50: On October 13, 2017 at approximately 11:41am while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y. 11980, Mr. Warren Ovalle violated rule #13, of the conditions of his release in that he had contact with Mr. Robert Akre, without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

Amended

Charge#51: On October 13, 2017 at approximately 2:30pm in the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y. 11980, Mr. Warren Ovalle violated rule # 7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

STATE OF NEW YORK-EXECUTIVE DEPARTMENT
DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

Name: Ovalle, Warren A.
Warrant#: 162686

NYSID NO: 09347560J

DIN NO: 10R0095

Amended

Charge#53: On October 13, 2017 at approximately 2:30pm in the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule # 13, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

Amended

Charge#53: On October 14, 2017 at approximately 12:53pm while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule # 7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

Amended

Charge#54: On October 14, 2017 at approximately 12:53pm while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule #13, of the conditions of his release in that he had contact with Mr. Robert Akre, without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

Amended

Charge#55: On October 15, 2017 at approximately 12:12pm while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule # 7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

Amended

Charge#56: On October 15, 2017 at approximately 12:12pm while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule #13, of the conditions of his release in that he had contact with Mr. Robert Akre, without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

Amended

Charge#57: On October 16, 2017 at approximately 12:00pm while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule # 7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

STATE OF NEW YORK EXECUTIVE DEPARTMENT
DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

Name: Ovalle, Warren A. NYSID NO: 09347560J DIN NO: 10R0095
Warrant#: 752686

Amended

Charge#58: On October 16, 2017 at approximately 12:00pm while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule #13, of the conditions of his release in that he had contact with Mr. Robert Akre, without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

Amended

Charge#59: On October 17, 2017 at approximately 1:46pm while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule # 7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

Amended

Charge#60: On October 17, 2017 at approximately 1:46pm while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule #13, of the conditions of his release in that he had contact with Mr. Robert Akre, without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

Amended

Charge#61: On October 18, 2017 at approximately 10:43am while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule # 7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

Amended

Charge#62: On October 18, 2017 at approximately 10:43am while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule #13, of the conditions of his release in that he had contact with Mr. Robert Akre, without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

Amended

Charge#63: On October 19, 2017 at approximately 1:31pm while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule # 7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

Amended

Charge#64: On October 19, 2017 at approximately 1:31pm while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule #13, of the conditions of his release in that he had contact with Mr. Robert Akre, without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

STATE OF NEW YORK EXECUTIVE DEPARTMENT
DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

Name: Ovalle, Warren A.
Warrant#: 762686

NYSID NO: 09347560J

DIN NO: 10R0095

Charge#65: On October 20, 2017 at approximately 2:30pm in the Suffolk County Correctional Facility located at: 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule # 7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

Charge#66: On October 20, 2017 at approximately 2:30pm in the Suffolk County Correctional Facility located at: 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule # 13, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

Amended

Charge#67: On October 20, 2017 at approximately 5:51pm while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule # 7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

Amended

Charge#68: On October 20, 2017 at approximately 5:51pm while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11901, Mr. Warren Ovalle violated rule #13, of the conditions of his release in that he had contact with Mr. Robert Akre, without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

Amended

Charge#69: On October 21, 2017 at approximately 9:35pm while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule # 7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

Amended

Charge#70: On October 21, 2017 at approximately 9:35pm while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule #13, of the conditions of his release in that he had contact with Mr. Robert Akre, without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

STATE OF NEW YORK EXECUTIVE DEPARTMENT
DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

Name: Ovalle, Warren A,
Warrant#: 702686

NYSID NO: 09347560.J

DIN NO: 10R0095

Amended

Charge#71: On October 21, 2017 at approximately 10:05pm while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule # 7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

Amended

Charge#72: On October 21, 2017 at approximately 10:05pm while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule #13, of the conditions of his release in that he had contact with Mr. Robert Akre, without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

Amended

Charge#73: On October 22, 2017 at approximately 10:58am while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule # 7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

Amended

Charge#74: On October 22, 2017 at approximately 10:58am while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule #13, of the conditions of his release in that he had contact with Mr. Robert Akre, without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

Amended

Charge#75: On October 23, 2017 at approximately 11:45am while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule # 7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

Amended

Charge#76: On October 23, 2017 at approximately 11:45am while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule #13, of the conditions of his release in that he had contact with Mr. Robert Akre, without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

STATE OF NEW YORK EXECUTIVE DEPARTMENT
DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

Name: Ovalle, Warren A.
Warrant#: 762686

NYSID NO: 09347560J

DIN NO: 10R0095

Amended

Charge#77: On October 24, 2017 at approximately 12:50pm while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y. 11980, Mr. Warren Ovalle violated rule #7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

Amended

Charge#78: On October 24, 2017 at approximately 12:50pm while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y. 11980, Mr. Warren Ovalle violated rule #13, of the conditions of his release in that he had contact with Mr. Robert Akre, without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

Amended

Charge#79: On October 25, 2017 at approximately 11:52am while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y. 11980, Mr. Warren Ovalle violated rule #7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

Amended

Charge#80: On October 25, 2017 at approximately 11:52am while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y. 11980, Mr. Warren Ovalle violated rule #13, of the conditions of his release in that he had contact with Mr. Robert Akre, without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

Charge#81: On October 25, 2017 at approximately 2:30pm in the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y. 11980, Mr. Warren Ovalle violated rule #7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

Charge#82: On October 25, 2017 at approximately 2:30pm in the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y. 11980, Mr. Warren Ovalle violated rule #13, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

STATE OF NEW YORK EXECUTIVE DEPARTMENT
DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

Name: Ovalle, Warren A.
Warrant#: 762686

NYSID NO: 09347560J

DIN NO: 10R0095

Amended

Charge#83: On October 26, 2017 at approximately 10:16am while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y. 11901, Mr. Warren Ovalle violated rule # 7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

Amended

Charge#84: On October 26, 2017 at approximately 10:16am while at the Suffolk County Correctional Facility located at 15 Glover Drive Yaphank N.Y. 11901, Mr. Warren Ovalle violated rule #13, of the conditions of his release in that he had contact with Mr. Robert Akre, without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

Amended

Charge#85: On October 27, 2017 at approximately 2:30pm in the Suffolk County Correctional Facility located at: 15 Glover Drive Yaphank N.Y. 11901, Mr. Warren Ovalle violated rule # 7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

Amended

Charge#86: On October 27, 2017 at approximately 2:30pm in the Suffolk County Correctional Facility located at: 15 Glover Drive Yaphank N.Y. 11901, Mr. Warren Ovalle violated rule # 13, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

Amended

Charge#87: On October 31, 2017 at approximately 2:30pm in the Suffolk County Correctional Facility located at: 15 Glover Drive Yaphank N.Y. 11901, Mr. Warren Ovalle violated rule # 7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

Amended

Charge#88: On October 31, 2017 at approximately 2:30pm in the Suffolk County Correctional Facility located at: 15 Glover Drive Yaphank N.Y. 11901, Mr. Warren Ovalle violated rule # 13, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

Amended

Charge#89: On November 4, 2017 at approximately 2:30pm in the Suffolk County Correctional Facility located at: 15 Glover Drive Yaphank N.Y. 11901, Mr. Warren Ovalle violated rule # 7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

STATE OF NEW YORK-EXECUTIVE DEPARTMENT
DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

Name: Ovalle, Warren A.
Warrant#: 762686

NYSID NO: 09347560J

DIR NO: 10R0095

Amended

Charge#90: On November 4, 2017 at approximately 2:30pm in the Suffolk County Correctional Facility located at: 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule # 13, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

Amended

Charge#91: On November 10, 2017 at approximately 2:30pm in the Suffolk County Correctional Facility located at: 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule # 7, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre an individual known to him to have a criminal record without the knowledge or consent of his Parole Officer.

Amended

Charge#92: On November 10, 2017 at approximately 2:30pm in the Suffolk County Correctional Facility located at: 15 Glover Drive Yaphank N.Y 11980, Mr. Warren Ovalle violated rule # 13, of the conditions of his release in that he had contact with his co-defendant Mr. Robert Akre without the knowledge or consent of his Parole Officer and contrary to a special condition imposed on November 2, 2016.

State of New York - Executive Department
Department of Corrections and Community Supervision

Name: Chen, Warren A.
Warrant#: 762686

NYSID NO: 09347560J

DIN NO: 10R0055

CASE SUMMARY

Warren A. Ovallo is a 40-year-old male who released to NYS DOCCS after serving part of his sentences of 00-00/06-00 and 01-00/03-00 for the convictions of Assault 2nd and Attempted Robbery 2nd. Warren A. Ovallo was sentenced on 1/07/2010 in Suffolk County Court by Honorable Judge Hudson. His maximum expiration date is 03/17/2020. The subject was released to New York State Department of Corrections and Community Supervision in 2002.

Instant Offense

In the instant offense Warren A. Ovallo in concert with the person described as the victim's brother and involved in what was described as a secret relationship by authorities, noticed a scratch on the 17-year-old victim's back and attempted to be involved with a girl. The victim was handcuffed to a toilet and restrained for a period of more than 12 hours and was repeatedly whipped with a length of coaxial cable and had very little freedom. While Warren A. Ovallo and his co-defendant were asleep, the victim was able to free himself by braking the toilet bracket.

Criminal History

Warren A. Ovallo's criminal history began 7/1/1997 at the age 20. He had 4 prior arrests yielding 1 felony conviction and 3 violations. His sanctions included probation, local jail and 1 state prison term. Violent offenses include attempted robbery 2nd 9/19/01 and VIO for assault 2nd. His criminal behavior pattern is violence and/or aggressive behavior with a weapon, propensity and evidences an emerging record of unlicensed operation of a motor vehicle and drug related activity. Warren A. Ovallo criminal history includes his instant offense.

Prior Parole History

The subject was released to New York State Department of Corrections and Community Supervision 6/28/02. The subject has had two prior parole violations. On 3/23/15 warrant # 0658297 was issued due to the Warren A. Ovallo failing to follow the directions of his assigned parole officer. On 9/27/16 was issued due to Warren A. Ovallo reportedly tampering with his GPS monitor device. On 9/18/17 warrant # 762538 was issued due to the subject fraternizing with his co-defendant Mr. Robert Akre. Robert Akre's wallet and other personal items were observed in the subject's residence. On 9/18/17 at approximately 6:05am during a visit at the subject's residence located at 15 Locust Avenue, Central Islip N.Y. co-defendant Robert Akre was observed to have run out of the back of the subject's residence, with a quantity of marijuana. On 9/18/17 at approximately 6:15am co-defendant, Robert Akre was apprehended and taken into police custody. On 9/18/17 at approximately 6:55 pm during a visit to the subject's residence located at 15 Locust Street, Central Islip N.Y. the subject was in possession of two large metal knives, three metal razors, eight metal Chinese dragon attack stars, in possession of two clear seal through packages with a green leafy substance tightly wrapped separately that were hidden in the bottom of the closet of his common living area, in possession of drug paraphernalia, to wit a silver drug grinder that was observed to still have a green leafy substance in it and to a strong scent. On 9/18/17 at approximately 6:15am upon doing a search at 15 Locust Street Central Islip N.Y. in Warren A. Ovallo's common living area, Robert Akre's wallet, birth certificate and his car insurance identification card were found in the residence. Additionally, Robert Akre's car insurance identification card was observed to have Warren A. Ovallo's address: 15 Locust Street, Central Islip N.Y. listed on his piece of identification.

EXHIBIT 7

CMSCHRONW * *

NEW YORK STATE - DOCCS
COMMUNITY SUPERVISION
PAROLEE CHRONO REPORT
FROM 01/01/1999 THRU 12/03/2018

DATE: 12/03/2018
PAGE: 9

NAME: OVALLE, WARREN A
NYSID: 09347560J
DIN: 10R0095

AREA:
SPO NAME:
PO NAME:

DATE TIME TYPE ACTIVITY LOCATION

ENTERED BY:

[REDACTED]

ENTERED BY: SAMPLES, BONTIN M
AREA: SUFFOLK SPO NAME: SPO, UNK SHAW
10/31/2017 04:05PM PAROLE VIOLATION UNIT
CONTACT ADDRESS: SUFFOLK-CJ
WARRANT NO. = 0762538, FINAL HEARING OF 10/31/2017
ADJOURNMENT REASON = BY ATTORNEY OF PAROLEE
SPO REVIEW: 11/07/2017

PO NAME: ERICKSEN, JOHN
PVU-PAROLE ADJRN COURT

ENTERED BY: HAMLETTE, SABRINA
AREA: SUFFOLK SPO NAME: SPO, UNK SHAW
REPORT TAKEN BY: HAMLETTE, SABRINA
10/30/2017 07:13PM OTHER WORK
SUB VOP SUBMITTED WITH 5 ADDITIONAL FRATERIZING CHARGES THAT WERE DATED FOR
10/6/17, 10/10/17, 10/13/17, 10/20/17 AND 10/25/17 DUE TO P CONTINUING TO
HAVE CONTACT WITH HIS CODEFENDANT WHILE INCARCERATED AT YAPHANK C.F.
SPO REVIEW: 11/07/2017

PO NAME: ERICKSEN, JOHN

ENTERED BY: MENCARELLI, CATHERINE
AREA: SUFFOLK SPO NAME: SPO, UNK SHAW
10/30/2017 01:15PM TELEPHONE FROM OTHER
SPOKE W/MR. DEL RIO REGARDING VIOLATION CASE. LAW ENFORCEMENT
IES OF RELEVANT PHOTOS FOR FINAL HEARING. WRITER NEEDS TO HAVE 3 COLOR COP
SAME. CM#221/OSI
SPO REVIEW: 11/07/2017

PO NAME: ERICKSEN, JOHN

ENTERED BY: JUSTE, GARRY
AREA: SUFFOLK SPO NAME: SPO, UNK SHAW
10/25/2017 11:30AM OTHER WORK
REVIEWED SVOP REPORT.
SPO REVIEW: 11/07/2017

PO NAME: ERICKSEN, JOHN

ENTERED BY: HAMLETTE, SABRINA
AREA: SUFFOLK SPO NAME: SPO, UNK SHAW
REPORT TAKEN BY: HAMLETTE, SABRINA
10/23/2017 12:07PM LETTER TO OTHER
POSCANNED AND EMAILED OVALLE, WARREN'S PRELIMINARY DECISION TO DATES, LYNDSEY L
(DOCCS) LYNDSEY.DATES@DOCCS.NY.GOV WHO CONFIRMED REING IN RECEIPT OF DOCUMENT
SPO REVIEW: 11/07/2017

PO NAME: ERICKSEN, JOHN

EXHIBIT 8

1 STATE OF NEW YORK
2 EXECUTIVE DEPARTMENT
3 DEPARTMENT OF CORRECTIONS &
4 COMMUNITY SUPERVISION
5 *****
6 In the matter of
7 WARREN OVALLE
8 NYSID # 09347360J
9 WARRANT # 762686
10 DIN # 10R0095
11 INSTITUTION: Suffolk County Jail

12 *****
13 HEARING TYPE: Preliminary Hearing
14 LOCATION: 100 Center Drive
Riverhead, NY 11901
15
16 DATE: December 13, 2017
17 BEFORE: SHARON BURNETT
Preliminary Hearing Officer
18 APPEARANCES: JOHN ERICKSEN
Parole Revocation Specialist
19
GLENN OBEDIN
20 Attorney for Parolee
21 WARREN OVALLE
Parolee
22
23 HEARING REPORTER: Sara Galante
24
25

PROCEEDINGS

PHO BURNETT: Are you Warren Ovalle?

PAROLEE: Yes, ma'am.

PHO BURNETT: This is a preliminary hearing in the matter of Warren Ovalle, NYSID No. 09347560J, Warrant No. 762686.

Good morning everyone, my name is Sharon Burnett. I am the Preliminary Hearing Officer designated by the Board of Parole to preside over this preliminary hearing.

Because testimonies will be taken, PRS Erickson and Mr. Ovalle, please raise your right hands to be sworn.

(Whereupon, PRS Erickson and Parolee Ovalle were sworn in by PHO Burnett.)

PHO BURNETT: Please state your names for the record, starting with the PRS.

PRS ERICKSEN: PRS Erickson, Suffolk area office.

PHO BURNETT: Counselor?

MR. OBEDIN: Naiburg, Obedin and Weissman, by Glenn Obedin, 320 Carleton Avenue, Suite 4200 Central Islip, New York, for Mr. Ovalle.

PHO BURNETT: State your name.

PAROLEE: Warren Ovalle.

PHO BURNETT: Mr. Ovalle, this preliminary hearing, it's an informal, administrative hearing. It's a hearing to determine whether or not there's reasons to believe, or probable cause

1 to believe, that you violated at least one of the conditions of your
2 release in an important respect. If probable cause is found, you will
3 be held over for the final hearing. If probable cause is not found,
4 within 15 days of the lodge-in of your warrant, your warrant will be
5 vacated and you will return to parole supervision. Do you
6 understand?

7 PAROLEE: Yes.

8 PHO BURNETT: Thank you.

9 Mr. Obedin, have you discussed with Mr. Ovalle the
10 charges and the ways in which he may plea?

11 MR. OBEDIN: Yes, I have.

12 PHO BURNETT: Thank you.

13 And is Mr. Ovalle in receipt of his charges, consisting
14 of 95 charges?

15 MR. OBEDIN: He is.

16 PHO BURNETT: Okay. There's also a case summary
17 signed by Officer Hamlette on 12/1/2017, and Senior Parole Officer G.
18 Juste.

19 MR. OBEDIN: Yes, we have reviewed that as well.

20 PHO BURNETT: Okay. There's also a certificate of
21 release to parole supervision in the name of Warren Ovalle, signed by
22 Mr. Ovalle, on March 17th of 2015.

23 MR. OBEDIN: Yes, we have that as well.

24 PHO BURNETT: Okay. There are also other
25 documents that I will not put into the record at this time, as the

1 Division will ask for them to be taken into evidence at the appropriate
2 time. I also have a notice of violation in the name of Warren A.
3 Ovalle, NYSID number and Warrant number are the numbers I read
4 into the record. Where the document has violation of release report
5 received, it says, "Refused to sign", but it is dated 12/4/2017, at
6 which time, Mr. Ovalle was scheduled to have this preliminary
7 hearing held. The box where — the line where Mr. Ovalle would sign
8 that he accepts or requests to have a preliminary hearing states,
9 "Refused to sign". But it was witnessed by Officer Hamlette. Mr.
10 Ovalle, did you receive these documents?

11 PAROLEE: Yes.

12 PHO BURNETT: Thank you.

13 Okay. PRS Ericksen, did you prepare the violation of
14 release report?

15 PRS ERICKSEN: No, I did not.

16 PHO BURNETT: Did you review the violation of
17 release report?

18 PRS ERICKSEN: Yes, I did.

19 PHO BURNETT: And does such document appear to
20 have been completed in the normal course of business?

21 PRS ERICKSEN: Yes, it does.

22 PHO BURNETT: And do you attest to the truthfulness and
23 the accuract of the contents therein?

24 PRS ERICKSEN: Yes, I do.

25 PHO BURNETT: At this time I will take into

1 evidence, as State's Exhibit I, the violation of release report as an
2 accusatory instrument. Are you ready to proceed?

3 PRS ERICKSEN: Yes.

4 PHO BURNETT: Okay. What charge will you
5 proceed on?

6 PRS ERICKSEN: Charge No. 44, Judge.

7 PHO BURNETT: Please read that charge into the
8 record.

9 PRS ERICKSEN: On October 10th, 2017, at
10 approximately 2:30 PM in the Suffolk County Correctional Facility,
11 located at 15 Glover Drive, Yaphank, New York, 11980, Mr. Warren
12 Ovalle violated Rule No. 7 of the conditions of his release, in that, he
13 had contact with his co-defendant, Mr. Robert Akre, an individual
14 known to him to have a criminal record, without the knowledge or
15 consent of his parole officer.

16 I'm sorry, Judge, I would actually -- I want to proceed
17 on Charge No. 45.

18 MR. OBEDIN: 45?

19 PRS ERICKSEN: Yes. Although -- wait.

20 MR. OBEDIN: Is that the one you just read into the
21 record?

22 PRS ERICKSEN: Hold on. Actually, it is number 44.

23 PHO BURNETT: Same charge, different rule?

24 PRS ERICKSEN: Different rule, but it's Charge No. 44 in the
25 amended copy of the VOP.

1 PHO BURNETT: There's an amended copy?
2 PRS ERICKSEN: Yes. The charges were amended;
3 however, Charge No. 44 is the one I want to proceed with in the
4 amended copy.
5 MR. OBEDIN: Can I just see if your Rule 44 is the
6 same Rule 44 as what I'm looking at?
7 PRS ERICKSEN: Of course, yes. Yes, it is.
8 MR. OBEDIN: Okay.
9 PHO BURNETT: It's the same as this?
10 PRS ERICKSEN: Yes, yes.
11 MR. OBEDIN: It's the same?
12 PRS ERICKSEN: Rule 44.
13 PHO BURNETT: Because yours I got.
14 PRS ERICKSEN: This is the original copy, Judge.
15 PHO BURNETT: Lend me the amended copy.
16 PRS ERICKSEN: Yes.
17 PHO BURNETT: Lend me the amended copy.
18 PRS ERICKSEN: There should be an amended copy
19 there, Judge. It should be in front of it.
20 PHO BURNETT: I only took one package, I gave you
21 back all the others.
22 PRS ERICKSEN: Yes. Can I see this, Judge, please?
23 PHO BURNETT: Yes.
24 PRS ERICKSEN: Thank you. In the front is the
25 amended version. There it is, Judge.

1 PHO BURNETT: Okay. And the way you read it into
2 the record is okay?

3 PRS ERICKSEN: I'm going to read it again, Judge,
4 just to be sure.

5 PHO BURNETT: Okay.

6 PRS ERICKSEN: On October 20, 2017 -- this is
7 Charge No. 44, the amended version. On October 10, 2017, at
8 approximately 2:30 PM --

9 PHO BURNETT: Slow down.

10 PRS ERICKSEN: -- in the Suffolk County
11 Correctional Facility, located at 15 Glover Drive, Yaphank, New
12 York, 11980, Mr. Warren Ovalle violated Rule No. 13 of the
13 conditions of his release, in that, he had contact with his
14 co-defendant, Mr. Robert Akre, without the knowledge or consent of
15 his parole officer, and contrary to his special condition imposed on
16 November 2nd, 2016.

17 PHO BURNETT: Mr. Ovalle's plea?

18 MR. OBEDIN: Not guilty.

19 PHO BURNETT: Thank you.

20 Officer, please present your case.

21 PRS ERICKSEN: All right. Judge, I would like to call
22 in my first witness, Parole Officer Evans.

23 PHO BURNETT: Hi, Officer. First initial?

24 PO EVANS: E.

25 PHO BURNETT: Officer Evans, please raise your

1 right hand to be sworn.

2 (Whereupon, PO Evans was sworn in by PHO
3 Burnett.)

4 PHO BURNETT: Please state your name, shield, and
5 command.

6 PO EVANS: Eleanor Evans, my shield is 303, my
7 command is Queens II.

8 PHO BURNETT: Thank you.

9 Your witness, PRS Ericksen.

10 PRS ERICKSEN: Parole Officer Evans, do you
11 recognize the individual sitting to the left of me wearing green?

12 PO EVANS: Yes.

13 PRS ERICKSEN: Could you tell us who he is?

14 PO EVANS: Warren Ovalle.

15 PRS ERICKSEN: Did you supervise Mr. Ovalle under
16 parole supervision at any time?

17 PO EVANS: Yes.

18 PRS ERICKSEN: All right. What time period did you
19 supervise him?

20 PO EVANS: 11/2/2016.

21 MR. OBEDIN: I'm sorry?

22 PO EVANS: 11/2/2016.

23 PRS ERICKSEN: 11/2/2016?

24 PO EVANS: Yes.

25 PRS ERICKSEN: Until, approximately, when?

1 PO EVANS: Until approximately, 3/1/2017.

2 PRS ERICKSEN: Thank you, Officer.

3 PO EVANS: You're welcome.

4 PRS ERICKSEN: All right. Did there come a time
5 when you reviewed Mr. Ovalle's conditions of release with him?

6 PO EVANS: Yes.

7 PRS ERICKSEN: When did you do that?

8 PO EVANS: 11/2/2016.

9 PRS ERICKSEN: Did you give him any special
10 conditions on that date?

11 PO EVANS: Yes.

12 PRS ERICKSEN: On what date did you give them?

13 PO EVANS: 11/2/2016.

14 PRS ERICKSEN: Thank you.

15 Already included in the Violation of Release report, I
16 have a document here I'd like you to take a look at, Parole Officer
17 Evans. Do you recognize this document?

18 PO EVANS: Yes.

19 PRS ERICKSEN: And what is that?

20 PO EVANS: Special conditions of release to parole
21 supervision.

22 PRS ERICKSEN: All right. Did you give these
23 conditions to Mr. Ovalle?

24 PO EVANS: Yes.

25 PRS ERICKSEN: All right. Was that on the date that

1 you told us?

2 PO EVANS: Yes.

3 PRS ERICKSEN: And what date was that again?

4 PO EVANS: 11/2/2016.

5 PRS ERICKSEN: All right. Were there any

6 no-contact conditions you gave to Mr. Ovalle?

7 PO EVANS: Yes.

8 PRS ERICKSEN: All right. Could you read that

9 condition, if there is one, on this document here?

10 PO EVANS: Yes. Read it out loud?

11 PRS ERICKSEN: Yes.

12 PO EVANS: I will not have contact with the following

13 individual, Akre, Robert, this means I will not attempt to meet in

14 person, contact by letter, telephone, electronic device or computer, or

15 through a third party, or via other means, the above individual the

16 without the knowledge and permission of my parole officer.

17 PRS ERICKSEN: All right. At the bottom of that

18 document, are there some signature?

19 PO EVANS: Yes.

20 PRS ERICKSEN: Whose signatures are there?

21 PO EVANS: Warren Ovalle and Parole Officer Evans.

22 PRS ERICKSEN: And that's you, Parole Officer

23 Evans?

24 PO EVANS: Yes, that's me.

25 PRS ERICKSEN: All right. And you witnessed Mr.

1 Ovalle sign that condition?

2 PO EVANS: Yes.

3 PRS ERICKSEN: Thank you. And is the date also on
4 that form?

5 PO EVANS: Yes.

6 PRS ERICKSEN: And could you read that off of the
7 form for us?

8 PO EVANS: 11/2/2016.

9 PRS ERICKSEN: Thank you. And did you review
10 this condition with Mr. Ovalle?

11 PO EVANS: Yes.

12 PRS ERICKSEN: At any time while you were
13 supervising Mr. Ovalle, did you remove his special condition to have
14 no contact with Mr. Akre?

15 PO EVANS: No.

16 PRS ERICKSEN: Do you know why the subject was
17 given a no-contact condition with Mr. Akre?

18 PO EVANS: He was the co-defendant -- did I say that
19 right? He was the person who -- he was the person who, I guess,
20 committed the crime with him. So you would call that a --

21 PHO BURNETT: Co-defendant.

22 PO EVANS: Co-defendant, there you go. Thank you.

23 PRS ERICKSEN: Thank you, Officer.

24 Judge, I have no further questions at this time.

25 PHO BURNETT: Do you wish to have a document

1 entered into evidence?

2 PRS ERICKSEN: Yes, Judge, I'm sorry.

3 PHO BURNETT: Do you wish to voir dire,
4 Counselor?

5 MR. OBEDIN: I'm not going to voir dire right now.

6 PHO BURNETT: Okay. At this time, I will take into
7 evidence, as State's Exhibit Number 2, the special conditions of release
8 to parole supervision that is dated and signed November 2nd of 2016,
9 by Mr. Ovalle, as testified by Officer Evans, as well as Officer Evans.
10 This will be State's 2.

11 Any questions for Officer Evans?

12 MR. OBEDIN: Very briefly.

13 Officer Evans, those conditions, the special conditions
14 particularly that you read into the record that you reviewed with Mr.
15 Ovalle. Those conditions were applicable while Mr. Ovalle was
16 under parole supervision, correct?

17 PO EVANS: Yes.

18 MR. OBEDIN: Okay. Thank you.

19 PHO BURNETT: Who's your next witness?

20 PRS ERICKSEN: Yes, Judge, I'd like to bring in
21 Officer Hamlette next.

22 PHO BURNETT: Officer Hamlette?

23 PRS ERICKSEN: Yes.

24 PHO BURNETT: Okay. Go ahead.

25 PO HAMLETTE: Good morning.

1 PHO BURNETT: What is your shield number, Officer?
2 PO HAMLETTE: Shield No. 1236.
3 PHO BURNETT: And your bureau?
4 PO HAMLETTE: Suffolk County area office.
5 PHO BURNETT: Please raise your right hand to be
6 sworn.
7 (Whereupon, PO Hamlette was sworn in by PHO
8 Burnett.)
9 PHO BURNETT: Please state your name, shield, and
10 command.
11 PO HAMLETTE: Sabrina Hamlette, parole officer for
12 Suffolk County area office, Shield No. 1236.
13 PHO BURNETT: Okay. PRS Ericksen, your witness,
14 PRS ERICKSEN: Parole Officer Hamlette, do you
15 recognize the individual sitting to me in green?
16 PO HAMLETTE: Yes.
17 PRS ERICKSEN: Who is he?
18 PO HAMLETTE: Warren Ovalle.
19 PRS ERICKSEN: Thank you. Did you supervise Mr.
20 Ovalle under parole supervision?
21 PO HAMLETTE: Yes.
22 PRS ERICKSEN: Could you tell us what time period?
23 PO HAMLETTE: I supervised Warren Ovalle from
24 March 31st, 2017, to the present.
25 PRS ERICKSEN: Thank you, Officer.

1 Do you know who supervised Mr. Ovalle prior to you?

2 PO HAMLETTE: Yes.

3 PRS ERICKSEN: Who was that?

4 PO HAMLETTE: Parole Officer Evans.

5 PRS ERICKSEN: Thank you. Did you receive Mr.

6 Ovalle's case immediately following Ms. Evans' supervision of Mr.

7 Ovalle?

8 PO HAMLETTE: Yes, I did.

9 PRS ERICKSEN: Thank you. Did there come a time
10 when you reviewed Mr. Ovalle's conditions of release with him?

11 PO HAMLETTE: Yes.

12 PRS ERICKSEN: All right. When did you do that?

13 PO HAMLETTE: April 12th, 2017.

14 PRS ERICKSEN: Did you review a special condition
15 with Mr. Ovalle regarding he have no contact with Robert Akre?

16 PO HAMLETTE: Yes.

17 PRS ERICKSEN: When did you do that?

18 PO HAMLETTE: April 12th, 2017.

19 PRS ERICKSEN: The same date, thank you.

20 At any time during your supervision of Mr. Ovalle, did
21 you tell him that he could have contact with Mr. Akre?

22 PO HAMLETTE: No.

23 PRS ERICKSEN: No further questions, Judge.

24 PHO BURNETT: What special condition did you
25 review with Mr. Ovalle?

1 PO HAMLETTE: The special conditions that PO
2 Evans had him sign on 11/2/2016.
3 PHO BURNETT: Do you have that special condition?
4 Show it to Officer Hamlette.
5 PRS ERICKSEN: Here are the special conditions.
6 PHO BURNETT: Is that the condition you reviewed
7 with him?
8 PO HAMLETTE: Yes.
9 PHO BURNETT: Counselor?
10 MR. OBEDIN: And that condition indicates that Mr.
11 Ovalle is not allowed to have contact with Mr. Robert Akre while
12 Mr. Ovalle is on parole supervision; is that correct?
13 PO HAMLETTE: Yes.
14 MR. OBEDIN: No further questions. Oh, excuse me.
15 Did you have Mr. Ovalle sign those special conditions when you
16 reviewed them with him?
17 PO HAMLETTE: No.
18 MR. OBEDIN: You didn't ask him to sign?
19 PO HAMLETTE: No.
20 MR. OBEDIN: Thank you.
21 PHO BURNETT: Anything else?
22 PRS ERICKSEN: Yes, Judge. But it's your testimony
23 today, Parole Officer, that you reviewed these special conditions and
24 that Mr. Ovalle acknowledged that he was aware of that condition?
25 PO HAMLETTE: Yes.

1 PRS ERICKSEN: Thank you. No further questions.

2 PHO BURNETT: I have a question.

3 When does Mr. Ovalle complete his parole
4 supervision?

5 PO HAMLETTE: The date I have is 3/17/2020.

6 PHO BURNETT: Thank you.

7 PRS ERICKSEN: No further questions, Judge.

8 PHO BURNETT: Thank you. You're excused.

9 PRS ERICKSEN: My next witness, Judge, would be:

10 Parole Officer Thomas. Would you like me to call her in?

11 PHO BURNETT: Yes.

12 Your first initial, please.

13 PO THOMAS: K.

14 PHO BURNETT: And your shield number?

15 PO THOMAS: 1608.

16 PHO BURNETT: And your bureau?

17 PO THOMAS: Suffolk County area office.

18 PHO BURNETT: Okay. Please raise your right hand
19 to be sworn.

20 (Whereupon, PO Thomas was sworn in by PHO
21 Burnett.)

22 PHO BURNETT: Please state your name, shield, and
23 command.

24 PO THOMAS: Parole Officer K. Thomas, 1608,
25 Suffolk County area office.

1 PHO BURNETT: PRS Erickson, your witness.

2 PRS ERICKSEN: All right. Parole Officer Thomas,
3 did there come a time, in your an official duties, that you dropped off
4 a subpoena at the Suffolk County Jail?

5 PO THOMAS: Yes.

6 PRS ERICKSEN: Ms. Thomas, do you recognize this
7 document I placed in front of you?

8 PO THOMAS: Yes, I do.

9 PRS ERICKSEN: What is that document?

10 PO THOMAS: It's a subpoena for a parole hearing.

11 PRS ERICKSEN: All right. And is that the subpoena
12 that you dropped off at the Suffolk County Jail?

13 PO THOMAS: Yes, it is.

14 PRS ERICKSEN: Could you read into evidence,
15 what the subpoena requests from the Suffolk County Jail?

16 PO THOMAS: It lists: Number one, anything relating
17 to the rules, regulations, and/or policies of the Suffolk County Jail,
18 relating to visitation or inmates; number two, logs, lists, or records of
19 all visitors who visited the Suffolk County Jail between September 18,
20 2017, and present, for the purpose of visiting inmate Warren Ovalle;
21 number three, logs, lists, records of all visitors who visited the Suffolk
22 County Jail between September 18, 2017, and actually visited inmate
23 Warren Ovalle; number four, any and all and documentations relating
24 to the rules, regulations, and/or policies of the Suffolk County Jail,
25 relating to phone calls between any person outside the jail and inmates;

1 number five, logs, lists or records of phone calls to and from any
2 person outside the jail and inmate Warren Ovalle between September
3 18, 2017, and present; number six, videos, photographs and/or audio
4 recordings in the custody of Suffolk County Jail, showing the visiting
5 area during each time Warren Ovalle was meeting with a visitor from
6 September 18, 2017, to present.

7 PRS ERICKSEN: Thank you, Officer.

8 PHO BURNETT: Do you wish to have that --

9 PRS ERICKSEN: Yes.

10 PHO BURNETT: -- document entered into evidence?

11 PRS ERICKSEN: Yes, Judge.

12 PHO BURNETT: Counselor, do you wish to voir

13 dire?

14 MR. OBEDIN: No, Judge.

15 PRS ERICKSEN: Judge, that's part of additional
16 evidence that I might need.

17 PHO BURNETT: I'm just going to take this into
18 evidence right now, the subpoena.

19 PRS ERICKSEN: All right. At some point I will
20 confirm that with another witness that it was part of a package that he
21 prepared. Maybe I can have a copy of that or something?

22 PHO BURNETT: Well, I'm going to give you back
23 everything.

24 PRS ERICKSEN: Okay, thank you.

25 PHO BURNETT: At this time, I will take into

1 evidence as States Exhibit No. 3, the subpoena to the Suffolk County
2 Jail and information as read into the record by Parole Officer Thomas.

3 Anything else?

4 PRS ERICKSEN: Nothing from I-2 Thomas.

5 PHO BURNETT: Counselor?

6 MR. OBEDIN: No questions.

7 PHO BURNETT: Thank you. Next witness?

8 PRS ERICKSEN: Next witness will be SPO Juste.

9 PHO BURNETT: What's your shield number, Officer

10 Juste?

11 SPO JUSTE: 263.

12 PHO BURNETT: And you're from what bureau?

13 SPO JUSTE: Suffolk.

14 PHO BURNETT: SPO Juste, please raise your right

15 hand to be sworn.

16 (Whereupon, SPO Juste was sworn in by PHO

17 Burnett.)

18 PHO BURNETT: Please state your name, shield, and

19 command.

20 SPO JUSTE: SPO Gary Juste, Shield 363, Suffolk

21 office.

22 PHO BURNETT: PRS Erickson, your witness.

23 PRS ERICKSEN: Thank you, Judge.

24 SPO Juste, did there come a time, in your official duty

25 as a senior parole officer, that you were asked to pick up some

1 evidence at the Suffolk County Jail in Riverhead, New York, as a
2 result of a subpoena?

3 SPO JUSTE: Yes.

4 PRS ERICKSEN: Did you pick up that evidence --

5 SPO JUSTE: Yes.

6 PRS ERICKSEN: -- SPO Juste?

7 On what date was that?

8 SPO JUSTE: December 11th.

9 PRS ERICKSEN: Thank you. And where did you go
10 to get that evidence?

11 SPO JUSTE: I went to Suffolk County Jail records.

12 PRS ERICKSEN: Where is that located?

13 SPO JUSTE: That's the building next door, adjacent to
14 this building here.

15 PRS ERICKSEN: Thank you, Officer.

16 Judge, am I able to get that back that document?

17 PHO BURNETT: Yes, that's Exhibit 3.

18 PRS ERICKSEN: Yes.

19 SPO Juste, do you recognize this manila envelope?

20 SPO JUSTE: Yes.

21 PRS ERICKSEN: Is this the package you received
22 from the Suffolk County Jail on that date?

23 SPO JUSTE: Yes.

24 PRS ERICKSEN: Yes. Can you look at the
25 documents inside and see if those are the documents and items that

1 you picked up on that date?

2 PHO BURNETT: Just tell us what they are.

3 SPO JUSTE: Yes. That's the subpoena, that's the logs,
4 and the three CDs, and this certification.

5 PHO BURNETT: Certificate of what?

6 SPO JUSTE: Documents we received.

7 PHO BURNETT: Okay.

8 PRS ERICKSEN: All right. And actually, that was
9 my next question for you, could you read the certification letter for us?

10 SPO JUSTE: Okay.

11 "I, Lieutenant Carl Schneider, commanding officer of
12 the Suffolk County Sheriff's Records Section hereby certify that the
13 records attached is in the custody of and is a true copy of the full and
14 complete record of the condition act, transaction, or currents, or events
15 of this institution/office regarding inmate Warren Ovalle, 6/08/77,
16 DIN No. 347249 for September 18, 2017, to December 5th, 2017, for
17 the following: One, any and all documents relating to the rules
18 regulations, and/or policies of the Suffolk County Jail relating to
19 visitation of inmates; two, logs, release of records, of all visitors who
20 visited the Suffolk County Jail for the purpose of visiting inmate
21 Warren Ovalle; three, logs, lists of records of all visitors who visited
22 the Suffolk County Jail and who actually visited inmate Warren
23 Ovalle; four, any and all documentations relating to the rules,
24 regulations, and/or policies of the Suffolk County Jail relating to
25 phone calls between any persons outside the jail and inmate Warren

1 Ovalle; five, logs, lists of records of phone calls to any person outside
2 the jail and inmate Warren Ovalle, videos, photographs/audio
3 recordings, showing the visiting area showing each of inmate Warren
4 Ovalle's visits. There are no records of visitors canceling their visits,
5 photographs of the visiting area and/or audio recordings of the visiting
6 area during this time -- this time period, I'm sorry.

7 I further certify that this record was made in the regular
8 course of business of this institution/office, and it is in the regular
9 course of business of this institutions office to make such record.

10 And such record was made at the time of the condition at
11 transaction or currents or event or within a reasonable time thereafter,
12 December 7, 2017. Signed by Lieutenant Carl Schneider."

13 PRS ERICKSEN: Thank you.

14 PHO BURNETT: Do you wish to have that document
15 into evidence?

16 PRS ERICKSEN: Yes, I would, Judge.

17 PHO BURNETT: Counselor, any voir dire?

18 MR. OBEDIN: Yes, I'd like to see that certification
19 document, please. Thank you.

20 Officer Juste, just to verify on what you read into the
21 record: is it correct that this certification indicates, there are no
22 records of visitors cancelling their visits, photographs of the
23 visiting area and/or audio recordings of the visiting area during this
24 time period? Meaning, the period requested in the subpoena; is that
25 correct?

1 SPO JUSTE: May I -- what are you referring to? It
2 says no records of visitors cancelling their visits, photographs of the
3 visiting area and/or audio recordings of the visiting area during this
4 time period.

5 MR. OBEDIN: Okay. Thank you.

6 PHO BURNETT: Counselor?

7 MR. OBEDIN: What is Mr. Ericksen offering into
8 evidence? Just that certification page or the entire package?

9 PRS-ERICKSEN: As of right now, just the certificate
10 page.

11 MR. OBEDIN: All right. I have no objection to the
12 certification page.

13 PHO BURNETT: This will be State's Exhibit
14 Number 4.

15 Anything else?

16 PRS-ERICKSEN: No, Judge.

17 PHO BURNETT: Counselor, questions for SPO Juste?

18 PRS-ERICKSEN: I'm sorry, I do have more questions,
19 I'm sorry.

20 In these documents also, Officer, do you see one
21 marked "inmate visitor history"?

22 SPO JUSTE: Yes. It's dated 12/7/17.

23 PRS-ERICKSEN: All right. And that document's
24 marked "inmate visitor history", SPO Juste?

25 SPO JUSTE: Yes.

1 PRS ERICKSEN: Thank you. Could you tell me, in
2 that document, who's name is listed as being the inmate?

3 SPO JUSTE: Ovalle, Warren.

4 PRS ERICKSEN: Thank you. And could you go to
5 the section marked "inmate visitor history" and tell me who is listed
6 as being a visitor on 10/10/77?

7 SPO JUSTE: Robert Akre.

8 PRS ERICKSEN: Thank you, Officer.

9 No further questions.

10 PHO BURNETT: Counselor?

11 MR. OBEDIN: Can I see that, please?

12 Officer Juste, does it indicate how long the visit lasted
13 on that page?

14 SPO JUSTE: No, sir.

15 MR. OBEDIN: Does it indicate whether Mr. Ovalle
16 and Mr. Akre ever actually sat down face-to-face with each other?

17 SPO JUSTE: It just says "inmate visitor history".

18 MR. OBEDIN: Does it indicate anywhere on that
19 document whether Mr. Ovalle and Mr. Akre ever actually spoke with
20 each other?

21 SPO JUSTE: No, sir.

22 MR. OBEDIN: Does it indicate anywhere on that
23 document that Mr. Ovalle and Mr. Akre used, perhaps, hand signals,
24 instead of verbal communication with each other?

25 PRS ERICKSEN: Objection, Judge.

1 PHO BURNETT: What's the objection?
2 PRS ERICKSEN: The objection is, what's the relevance
3 of hand signals --
4 PHO BURNETT: Doesn't matter what he used.
5 PRS ERICKSEN: -- or verbal communication. They
6 were together.
7 PHO BURNETT: Overruled.
8 Continue.
9 MR. OBEDIN: Did it indicate anywhere on that
10 document whether Mr. Ovalle and Mr. Akre had any form of
11 communication with each other on October 10th, 2017?
12 SPO JUSTE: No.
13 MR. OBEDIN: Okay. Thank you.
14 PRS ERICKSEN: I'd like to note my objection.
15 PHO BURNETT: All right. Over counsel's objection,
16 I will take into evidence as States Exhibit No. 5, the inmate
17 identification, inmate listed as Warren Ovalle, inmate visitor history.
18 Attention was drawn to 10/10/17. There are one -- two entries on
19 10/10, visitors are listed as Robert Akre. Document will be State's 5.
20 Okay. Anything else?
21 PRS ERICKSEN: No further questions.
22 PHO BURNETT: Thank you SPO Juste.
23 Any other questions for SPO Juste?
24 MR. OBEDIN: Yes, I might. Can I just see this?
25 PRS ERICKSEN: Sure.

1 MR. OBEDIN: Officer Juste, are you indicating that
2 this envelope is the envelope that you received from the Suffolk
3 County Sheriff's Department on -- I don't remember the date that you
4 said.

5 SPO JUSTE: 12/11, yes.

6 MR. OBEDIN: On 12/11? Okay.

7 Was this envelope sealed when you received it or was
8 it opened?

9 SPO JUSTE: It wasn't open.

10 MR. OBEDIN: It was sealed?

11 SPO JUSTE: It was closed.

12 MR. OBEDIN: Closed, okay. But not glued shut?

13 SPO JUSTE: No.

14 MR. OBEDIN: Okay. Did you seal it when you
15 received it? Did you put any kind of tape on it and sealed it?

16 SPO JUSTE: No.

17 MR. OBEDIN: Did you initial this envelope anywhere
18 with the date, showing that this is the envelope that you recovered
19 from the Suffolk County Jail?

20 SPO JUSTE: No.

21 MR. OBEDIN: So, Officer Juste we have no real way
22 of knowing whether this is the actual envelope you received or not
23 because you didn't make any notations on it anywhere. Do you --

24 PRS ERICKSEN: Objection, Judge.

25 PHO BURNETT: Overruled.

1 MR. OBEDIN: Anywhere on this envelope; isn't that
2 correct?

3 SPO JUSTE: I took it to the office with me.

4 MR. OBEDIN: What about this envelope is special
5 that allows you to know that that's the exact --

6 PHO BURNETT: Lower your tone, counselor.

7 MR. OBEDIN: -- that's the exact envelope.

8 PHO BURNETT: Lower your tone. Thank you.

9 MR. OBEDIN: To let you know that that's the exact
10 envelope that you received that day?

11 SPO JUSTE: This is the envelope, sir.

12 MR. OBEDIN: That's not an answer to the question.

13 PHO BURNETT: When you received the envelope,
14 has it been in your possession the entire time?

15 SPO JUSTE: Yes, until PRS Erickson took possession
16 of it.

17 PHO BURNETT: When was that?

18 SPO JUSTE: That was Monday, 11 -- December 11th.

19 PHO BURNETT: Okay. Anything else, counselor?

20 MR. OBEDIN: Nothing further.

21 PHO BURNETT: Thank you.

22 Okay. Anything else, PRS?

23 PRS ERICKSEN: Nothing further.

24 PHO BURNETT: Okay. Next witness?

25 PRS ERICKSEN: I'm calling Lieutenant Schneider.

1 PHO BURNETT: Your name, sir.
2 LT. SCHNEIDER: Schneider.
3 PHO BURNETT: That's S-C-H-N-E-I-D-E-R?
4 LT. SCHNEIDER: That's correct.
5 PHO BURNETT: And your shield number?
6 LT. SCHNEIDER: L102.
7 PHO BURNETT: L?
8 LT. SCHNEIDER: L102.
9 PHO BURNETT: And your first initial?
10 LT. SCHNEIDER: K.
11 PHO BURNETT: Okay. And you're from what
12 county? You're from the jail here?
13 LT. SCHNEIDER: Yeah. I'm the duty lieutenant --
14 I'm sorry, I'm not the duty lieutenant, I'm the record room Lieutenant.
15 PHO BURNETT: Okay. Please raise your right hand
16 to be sworn.
17 (Whereupon, Lieutenant Schneider was sworn in by
18 PHO Burnett.)
19 PHO BURNETT: Please state your name, shield, and
20 command.
21 LT. SCHNEIDER: My name is Lieutenant Karl
22 Schneider, I work for the Suffolk County Sheriff's Office, I'm the
23 commanding officer for the record room here at the jail.
24 PHO BURNETT: PRS Ericksen, your witness.
25 PRS ERICKSEN: Yes, Judge.

1 Judge, I believe one of the documents that was part of
2 this package you have. Thank you.

3 PHO BURNETT: There's another document there.

4 PRS ERICKSEN: Yes, thank you, Judge.

5 Lieutenant Schneider, do you recognize this envelope?

6 LT. SCHNEIDER: Yes, I do.

7 PRS ERICKSEN: Could you tell us what this
8 envelope is, or what this envelope contains?

9 LT. SCHNEIDER: This envelope contains a package
10 that we make up whenever we're issued a subpoena. We put the
11 material together that -- whoever's asking for the material, whoever
12 subpoenaed us with all the information that they asked for. And it
13 gets picked up by the agency, this envelope.

14 PRS ERICKSEN: Thank you, Officer. Could you
15 review these items here and tell me if that's what was contained in this
16 package of things that you provided?

17 LT. SCHNEIDER: This packet was made up last
18 week. I went through it last week. I certified that everything in here is
19 -- everything here that is on this sheet is accounted for in this packet
20 right here. So, yes, everything that's -- I, myself, certified that this is
21 all the material that was requested and that we turned over.

22 PRS ERICKSEN: All right. Lieutenant, I refer you to
23 these discs here. Were these discs part of the package?

24 LT. SCHNEIDER: Yes, they are.

25 PRS ERICKSEN: Can you tell us what they are?

1 LT. SCHNEIDER: These are videotapes of the
2 visiting areas of the correctional facilities here at Suffolk County.

3 PRS ERICKSEN: Thank you.

4 LT. SCHNEIDER: This too, or -- there are three of them.

5 PRS ERICKSEN: All three of them.

6 LT. SCHNEIDER: These two are the same, this one
7 here is an audio of the telephone calls made --

8 PRS ERICKSEN: Thank you.

9 LT. SCHNEIDER: -- by this individual.

10 PRS ERICKSEN: And you certify that these are
11 documents -- after review -- that these were the documents that were
12 prepared and provided to the New York State Department of
13 Corrections Community Supervision?

14 LT. SCHNEIDER: That is correct.

15 PHO BURNETT: Counsel, any questions?

16 MR. OBEDIN: Yes, just briefly.

17 Lieutenant, you commented that this is the certification
18 you that you signed, correct?

19 LT. SCHNEIDER: Yes, sir.

20 MR. OBEDIN: And does it indicate that there are no
21 photographs of the visiting area and/or audio recordings of the visiting
22 area? Or is there -- am I reading a double negative here?

23 LT. SCHNEIDER: There is no visiting pictures and
24 there is no visiting audio, just --

25 MR. OBEDIN: Just video?

1 LT. SCHNEIDER: Just video, correct.
2 MR. OBEDIN: Gotcha. So video without sound?
3 LT. SCHNEIDER: That's correct.
4 MR. OBEDIN: Okay. Thank you.
5 PHO BURNETT: Anything else?
6 PRS ERICKSEN: No, Judge.
7 PHO BURNETT: Thank you, Lieutenant.
8 Who's next?
9 PRS ERICKSEN: I'm going to bring in Officer
10 Mencarelli.
11 Officer Mencarelli is actually going to be bringing in a
12 laptop computer so we can present it for further evidence.
13 PHO BURNETT: Thank you for coming in. Can you
14 spell your last name?
15 OFFICER MENCARELLI: M-E-N-C-A-R-E-L-L-I.
16 PHO BURNETT: Shield number?
17 OFFICER MENCARELLI: 221.
18 PHO BURNETT: Suffolk?
19 OFFICER MENCARELLI: Office of Special
20 Investigations.
21 PHO BURNETT: Okay.
22 PRS ERICKSEN: Judge, I'm sorry, I would actually
23 like to enter this entire package into evidence.
24 PHO BURNETT: One second.
25 PRS ERICKSEN: I'm sorry.

1 PHO BURNETT: Special Investigation?

2 OFFICER MENCARELLI: Yes.

3 PHO BURNETT: Okay.

4 PRS ERICKSEN: I'm sorry, Judge, I would like to
5 enter this entire package into evidence.

6 PHO BURNETT: Counsel, you wish to voir dire?

7 MR. OBEDIN: Not voir dire, but object. Based on my
8 prior questioning and a lack of proper chain of custody regarding that
9 envelope and what was within it.

10 PHO BURNETT: Okay. Well we have the officer
11 who actually prepared what was placed in the envelope and given to
12 Officer Juste. So over counsel's objection, I will take the package into
13 evidence, including the three videos, as State's Exhibit No. 6.

14 PRS ERICKSEN: Thank you, Judge.

15 PHO BURNETT: Okay. Please raise your right hand
16 to be sworn.

17 (Whereupon, Officer Mencarelli was sworn in by PHO
18 Burnett.)

19 PHO BURNETT: Please state your name, shield, and
20 command.

21 OFFICER MENCARELLI: Officer Katherine
22 Mencarelli, Shield 221, Office of Special Investigations.

23 PHO BURNETT: Thank you. Officer -- PRS
24 Ericksen, your witness.

25 PRS ERICKSEN: Judge, if I may have the discs that

1 were entered into evidence?

2 Thank you. These video discs were already entered
3 into evidence. I would like Parole Officer Mencarelli to take a look
4 at.

5 PHO BURNETT: Are the discs labeled?

6 PRS ERICKSEN: Yes, they are.

7 PHO BURNETT: If so, please state what they are.

8 PRS ERICKSEN: I'm going to have Officer

9 Mencarelli list what they are.

10 Can you read what it says on the discs, Officer?

11 OFFICER MENCARELLI: Suffolk County Sheriff's
12 Office video evidence.

13 PRS ERICKSEN: Thank you. And on that disc, does
14 it also have a start date and time and end date and time?

15 OFFICER MENCARELLI: Start date is 10/10/2017,
16 14:00 hours, end date and time is 10/10/2017, 15:27 hours.

17 PRS ERICKSEN: Thank you, Officer.

18 Officer --

19 MR. OBEDIN: Judge, may I ask a voir dire question
20 on that?

21 PHO BURNETT: Sure.

22 MR. OBEDIN: Officer Mencarelli, did you write that
23 information --

24 OFFICER MENCARELLI: No.

25 MR. OBEDIN: -- on that disc?

1 OFFICER MENCARELLI: No, I did not.

2 MR. OBEDIN: Do you know who did?

3 OFFICER MENCARELLI: No.

4 MR. OBEDIN: Okay. Thank you.

5 PHO BURNETT: Anything else?

6 PRS ERICKSEN: Officer Mencarelli, do you know
7 who Robert Akre is?

8 OFFICER MENCARELLI: I do.

9 PRS ERICKSEN: Did you ever supervise him as a
10 parole officer?

11 OFFICER MENCARELLI: Yes.

12 PRS ERICKSEN: Approximately, when did you
13 supervise him?

14 OFFICER MENCARELLI: About 2013.

15 PRS ERICKSEN: All right. So would you say you would
16 be able to identify him by sight?

17 OFFICER MENCARELLI: I would.

18 PRS ERICKSEN: Do you know who Warren Ovalle
19 is?

20 OFFICER MENCARELLI: Yes.

21 PRS ERICKSEN: Do you see him here in this
22 courtroom today?

23 OFFICER MENCARELLI: Yes, I do.

24 PRS ERICKSEN: Could you tell us how you are able
25 to identify Mr. Ovalle?

1 OFFICER MENCARELLI: Yes. Mr. Ovalle is a
2 person currently under supervision by DOCCS. In 2013, when I
3 supervised Mr. Akre, Mr. Ovalle was his co-defendant. So I had the
4 opportunity to review that folder and that case.

5 Additionally, I've also been involved in investigations
6 that involved both Mr. Ovalle and Mr. Akre.

7 PRS ERICKSEN: All right. So you would say you
8 would be able to identify both of them fairly easily?

9 OFFICER MENCARELLI: Yes.

10 PRS ERICKSEN: Okay. I'm going to ask you to play
11 that disc for this courtroom. And please tell us if, at any point, you
12 see any frames that contain either Mr. Robert Akre or Mr. Ovalle in
13 the video footage.

14 MR. OBEDIN: Judge, I'm going to come around so I
15 can have a better view of the video.

16 PHO BURNETT: I'm going to have them put it there
17 so we can all see it.

18 MR. OBEDIN: Okay.

19 PHO BURNETT: We're going to have to put it where
20 you are, Ericksen.

21 PRS ERICKSEN: All right.

22 PHO BURNETT: And let Mencarelli trade places
23 with you.

24 PRS ERICKSEN: Judge, I would also like to note for
25 the record also, at this time, that the disc that PO Mencarelli is

1 playing, is the disc that was previously noted by the Lieutenant from
2 the Suffolk County Jail as being the video disc evidence that they
3 provided to the Department.

4 PHO BURNETT: So noted.

5 You could stand up over here, Ericksen.

6 PRS ERICKSEN: Okay. Thank you.

7 (Whereupon, Officer Mencarelli plays video.)

8 MR. OBEDIN: What is the timeframe on this?

9 PRS ERICKSEN: It's dated and time stamped, so
10 when we get to the point.

11 MR. OBEDIN: How long are we going to be waiting?

12 PRS ERICKSEN: Not too long.

13 OFFICER MENCARELLI: Can you want me to fast
14 forward?

15 PRS ERICKSEN: If you could fast forward to the
16 point where -- yes.

17 PHO BURNETT: Now Officer Mencarelli, what we're
18 looking at is visitors coming in?

19 OFFICER MENCARELLI: Yes.

20 PHO BURNETT: Okay.

21 PRS ERICKSEN: And Officer Mencarelli, do you
22 recognize this area right here?

23 OFFICER MENCARELLI: Yes, this is the front area
24 of Suffolk County Jail Yaphank facility.

25 PHO BURNETT: Yaphank facility, okay.

1 PRS ERICKSEN: And where is that located?

2 OFFICER MENCARELLI: I believe their address is
3 15 Glover Drive in Yaphank.

4 PRS ERICKSEN: Thank you. And how is it that you
5 recognize this area?

6 OFFICER MENCARELLI: I've been to the jail on
7 multiple occasions to either serve people or do interviews.

8 MR. OBEDIN: I'll stipulate that Officer Mencarelli
9 knows where this is.

10 OFFICER MENCARELLI: So this is --

11 PRS ERICKSEN: If you could comment, yeah, what
12 appears to be at certain points or what you think you're seeing and
13 then any evidence that you're very clear about as it occurs.

14 OFFICER MENCARELLI: I'm trying to not to pass it
15 here. But this person right here is the person I know to be Robert
16 Akre. I'll just rewind it a tad.

17 PHO BURNETT: Describe what the person's wearing,
18 please, and describe the person.

19 OFFICER MENCARELLI: Okay. That's the person I know
20 to be Robert Akre, he's a white male, blonde hair about shoulder length,
21 he's wearing a maroon top with some wording on the back and blue
22 colored pants.

23 PHO BURNETT: Okay.

24 OFFICER MENCARELLI: The time stamp here is
25 14:04 and 47 seconds on October 10th, 2017. And if I let the video

1 play --

2 PRS ERICKSEN: Please do.

3 OFFICER MENCARELLI: -- he walks up to the
4 visiting desk there to sign in.

5 And I just like to point out that, over the course of my
6 interactions with Mr. Akre, I did observe him previously with that leg
7 brace on. So that's just another identifier for him there. He goes
8 ahead and signs in. And then he walks over to get to a locker.

9 So this time stamp is 14:19 at about 23 seconds, this is
10 when the visitors start entering the visiting area. This is Mr. Akre
11 seated here in the second seat from the end. 14:19 at about 50
12 seconds is when the inmates start to enter the visiting area. 14:20
13 50 seconds, this is Mr. Ovalle at the top of the screen getting his seat
14 assignment, he's going to be walking around. He enters this frame
15 here, 14:21 and about 9 seconds.

16 So he walks down, Mr. Akre stands up, they embrace
17 for a few seconds, and then they sit down and proceed with the visit.

18 PRS ERICKSEN: Okay. Mencarelli, are you able to
19 pan in closer to that?

20 OFFICER MENCARELLI: I believe there's another
21 shot that goes closer.

22 PRS ERICKSEN: Okay. Thank you.

23 OFFICER MENCARELLI: So this is the zoomed in
24 section of the visit showing Mr. Ovalle down on the left wearing the
25 yellow and Mr. Akre there on the right, wearing the same shirt, pants,

1 blonde hair,

2 PHO BURNETT: What time is that stamped?

3 OFFICER MENCARELLI: This still right here is

4 15:05 and 54 seconds.

5 PRS ERICKSEN: If I could please pass and go back
6 over here? Thank you.

7 PHO BURNETT: Okay. So let the record reflect that
8 we're looking at -- we looked at several shots, this one is Mr. Ovalle
9 and Mr. Akre embraced, hugged, sat down. And we're looking at the
10 screen shot, where they're sitting directly across from each other.

11 PRS ERICKSEN: All right. PO Mencarelli, could you
12 just advance the video for a little bit, just to show that this wasn't just
13 a chance encounter, that they do spend a little bit of time together,
14 also.

15 OFFICER MENCARELLI: So here's 15:07, 15:10,
16 15:14, 15:17.

17 PRS ERICKSEN: All right. So clearly, there's some
18 time elapsed there.

19 OFFICER MENCARELLI: Yes. And then this is the
20 end here of the visit. And when the visit is over, they stand up and
21 embrace again before the visit is ended. Do you need me to fast
22 forward?

23 PHO BURNETT: Yes, please. Well, they're standing
24 now. They're both standing here.

25 OFFICER MENCARELLI: Time stamp here is 15:25

1 and 1 second.

2 PHO BURNETT: Hugged each other.

3 OFFICER MENCARELLI: They talk for a few more
4 seconds and then the visit ends.

5 PRS ERICKSEN: Now, do you -- the location where
6 they're sitting, do you also recognize this location where they actually
7 were sitting across from each other?

8 OFFICER MENCARELLI: Yes.

9 PRS ERICKSEN: And where is that?

10 OFFICER MENCARELLI: That is Yaphank visiting
11 facility.

12 PRS ERICKSEN: Thank you. And again, that address
13 is?

14 OFFICER MENCARELLI: 15 Glover Drive in
15 Yaphank.

16 PRS ERICKSEN: Thank you. And you already noted
17 how you have knowledge of that location.

18 Have you brought any photo evidence with you?

19 OFFICER MENCARELLI: Yes.

20 PRS ERICKSEN: Can I please see that?

21 OFFICER MENCARELLI: So I have some
22 photographs of Mr. Akre and Mr. Ovalle that are printed from
23 eJustice CJIM system. The system keeps track of everybody that has
24 a NYSID or is on parole or on probation. And we're able to have access
25 to those photographs.

1 PRS ERICKSEN: And you generated those
2 photographs as you do in the normal course of your duties?

3 PO MENCARELLI: Yes.

4 PRS ERICKSEN: Thank you. Would you also happen
5 to print any pictures from this video?

6 PO MENCARELLI: I did. So --

7 PRS ERICKSEN: This photo right here, Officer,
8 what's this a photo of?

9 OFFICER MENCARELLI: That's a photo from the
10 video we just played, showing Mr. Ovalle on the left, Mr. Akre on the
11 right, inside of Yaphank visiting room, it's dated 10/10/2017 at
12 14:55 hours.

13 PRS ERICKSEN: Judge, I'd like to enter that into
14 evidence.

15 PHO BURNETT: Show it to counsel, please,
16 I mean, we saw the video.

17 MR. OBEDIN: That's what I was going to say, but
18 okay.

19 PHO BURNETT: The video is good.

20 PRS ERICKSEN: Okay. If I could, just for the record,
21 you said these were printed from eJustice?

22 OFFICER MENCARELLI: Yes. One front of each
23 individual and one side profile of each individual.

24 PRS ERICKSEN: I would like these entered, Judge.

25 PHO BURNETT: And that's of whom?

1 OFFICER MENCARELLI: This first one here is Mr.
2 Robert Akre, date of birth, 1/18/86.

3 PHO BURNETT: That's who you supervised?

4 OFFICER MENCARELLI: Yes.

5 PHO BURNETT: That was on parole supervision?

6 OFFICER MENCARELLI: Yes.

7 This is the side profile of Mr. Robert Akre, this is
8 the front photograph of Mr. Ovalle --

9 PHO BURNETT: Well, we don't need that. Mr.
10 Ovalle is right here.

11 OFFICER MENCARELLI: -- and his side profile.

12 PRS ERICKSEN: That's good. All right. And you
13 were able to identify as both of them as Mr. Akre and Mr. Ovalle as
14 co-defendants at this time?

15 OFFICER MENCARELLI: Yes.

16 PHO BURNETT: Any voir dire on the pictures of Mr.
17 Akre?

18 MR. OBEDIN: I don't see the relevance, Your Honor,
19 the officer already identified Mr. Akre, indicated that she supervised
20 him. I'm not sure what the purpose of the photos are.

21 PHO BURNETT: Okay. Over counsel's objection, I
22 will take into evidence as State's No. 7, the photograph of Mr. Robert
23 S. Akre, date of birth listed as 1/18/1986, that Officer Mencarelli
24 testified that she supervised him while he was on parole supervision.

25 PRS ERICKSEN: Before you leave Parole Officer

1 Mencarelli, I would just like you to pull up the screen shot again, of
2 Mr. Ovalle and Mr. Akre sitting --

3 PHO BURNETT: Why is that necessary? Are you
4 going to ask another question?

5 PRS ERICKSEN: No. I wanted to ask -- I wanted to
6 bring the parole officer of record in to also identify.

7 PHO BURNETT: We have Officer Mencarelli who
8 supervised here to testify.

9 PRS ERICKSEN: All right.

10 PHO BURNETT: I mean, she can bring it up, go
11 ahead.

12 OFFICER MENCARELLI: What was the time stamp
13 again?

14 PRS ERICKSEN: The time stamp was --

15 MR. OBEDIN: What was the purpose of this?

16 PHO BURNETT: For the PO of record to identify
17 both parolees, or parolee and ex-parolee.

18 MR. OBEDIN: Okay. So we'll just leave it like that --

19 PHO BURNETT: Yes.

20 MR. OBEDIN: -- frozen?

21 PHO BURNETT: Yes.

22 MR. OBEDIN: That's what I thought. Okay.

23 OFFICER MENCARELLI: Do you need a specific
24 time or --

25 PRS ERICKSEN: No, that's fine.

1 PHO BURNETT: I think 15:05 is a good time. All
2 right. That's good, you can leave it. Go back, go back. Yes, that's
3 good.

4 OFFICER MENCARELLI: Okay. So that's 15:14.

5 PHO BURNETT: Okay. Do one without the hand --
6 without his hand in his face, Mr. Akre's hand. Yes. What time is that?

7 OFFICER MENCARELLI: That is 15:13 and
8 33 seconds.

9 PHO BURNETT: Okay. Any questions for Officer
10 Mencarelli, counselor?

11 MR. OBEDIN: Thank you. Officer Mencarelli, you
12 had concerns about Mr. Akre and Mr. Ovalle potentially
13 communicating with each other?

14 PRS ERICKSEN: Objection, Judge.

15 PHO BURNETT: What was the question?

16 MR. OBEDIN: You had concerns about Mr. Akre and
17 Mr. Ovalle communicating with each other? Did you have concerns
18 about that?

19 PRS ERICKSEN: Objection, Judge. What's the
20 pertinence?

21 PHO BURNETT: What's the relevancy of that
22 question, Counselor? When you say "concern" what do you mean?

23 MR. OBEDIN: Well, it was a special condition,
24 correct, that Mr. Ovalle not have communication with Mr. Akre?

25 PHO BURNETT: Well she's not the parole officer of

1 record,

2 MR. OBEDIN: Were you aware of that special
3 condition?

4 OFFICER MENCARELLI: Yes, I was.

5 MR. OBEDIN: Okay. Did you or, to your knowledge,
6 anyone else from your office, put in a request to the jail that Mr.
7 Ovalle not be able to receive visits from Mr. Akre?

8 PRS ERICKSEN: Objection, Judge.

9 PHO BURNETT: I'll allow it.

10 OFFICER MENCARELLI: No.

11 MR. OBEDIN: No, you did not?

12 OFFICER MENCARELLI: No, I did not.

13 MR. OBEDIN: Okay. Are you aware if anyone else
14 from the Division of Parole put in such a request?

15 OFFICER MENCARELLI: I'm not aware, I can just
16 say I did not.

17 MR. OBEDIN: You did not. Okay. Thank you.

18 PHO BURNETT: Okay. Any questions for Officer
19 Mencarelli?

20 PRS ERICKSEN: No.

21 PHO BURNETT: Thank you very much.

22 Who's coming back now?

23 PRS ERICKSEN: I'm going to bring Officer Hamlette.

24 (Whereupon, a brief recess was taken.)

25 PHO BURNETT: We're back on the record.

1 Officer Hamlette, you're still under oath.

2 PO HAMLETTE: Okay, thanks.

3 PHO BURNETT: PRS Ericksen, your witness.

4 PRS ERICKSEN: All right. Parole Officer Hamlette,

5 I would just like to you to view this video image on the computer

6 here. Do you recognize the individuals in that image?

7 PO HAMLETTE: Yes, I do.

8 PRS ERICKSEN: All right. Could you identify them?

9 PO HAMLETTE: Yes. The young man in the orange
10 suit to the left of the screen is Warren Ovalle. And the male to the
11 right of the screen is Robert Akre.

12 PRS ERICKSEN: All right. And you said -- what
13 color did you say he was wearing?

14 PO HAMLETTE: I want to say orange or yellow.

15 PRS ERICKSEN: Okay. Thank you, Officer. And
16 how are you able to identify them?

17 PO HAMLETTE: Warren Ovalle is my parolee, I
18 supervised him on parole. Robert Akre, I can identify him from 9/18,
19 he is the co-defendant for Warren Ovalle.

20 PRS ERICKSEN: All right. And how -- how can you
21 identify him? Have you seen photos of him? Have you seen him?
22 How would you identify him?

23 PO HAMLETTE: Yes. I identified Robert Akre
24 through a photo on 9/17/2017, and also by seeing him in person on
25 9/18 at the -- at Warren Ovalle's residence.

1 PRS ERICKSEN: All right. No further question,
2 Judge.
3 PHO BURNETT: What date was that?
4 PO HAMLETTE: 9/18/2017.
5 PRS ERICKSEN: I'm sorry, Judge. One more --
6 PHO BURNETT: One second.
7 PRS ERICKSEN: I'm sorry.
8 PHO BURNETT: 9/18/2017 --
9 PO HAMLETTE: Yes.
10 PHO BURNETT: -- you saw Mr. Akre?
11 PO HAMLETTE: Yes.
12 PHO BURNETT: At whose residence?
13 PO HAMLETTE: Warren Ovalle's residence.
14 PHO BURNETT: Okay.
15 PRS ERICKSEN: One further question. And this
16 photograph here that's of this video, could you just tell me what the --
17 PHO BURNETT: The still shot of the video.
18 PRS ERICKSEN: Yes, the still shot, could you tell me
19 what the date --
20 PO HAMLETTE: Yes.
21 PRS ERICKSEN: -- and time is?
22 PO HAMLETTE: Absolutely. October 10th, 2017. And
23 it's 15 hours -- 15:13 hours.
24 PRS ERICKSEN: All right. Thank you.
25 No further questions.

1 MR. OBEDIN: Officer Hamlette, what you've
2 identified, that occurred on October 10, 2017; is that right?

3 PO HAMLETTE: Yes.

4 MR. OBEDIN: This incident at the jail where Mr.
5 Ovalle is in the visiting area with Mr. Akre, correct? That's October
6 10th of '17?

7 PO HAMLETTE: Yes.

8 MR. OBEDIN: And you were Mr. Ovalle's parole
9 officer at that time on that date?

10 PO HAMLETTE: Yes.

11 MR. OBEDIN: Okay. So you were in charge of
12 supervising him while released from custody; is that correct?

13 PO HAMLETTE: Yes.

14 MR. OBEDIN: But Mr. Ovalle wasn't released from
15 custody on that date; isn't that correct?

16 PRS ERICKSEN: Objection, Judge.

17 PHO BURNETT: Overruled. Continue.

18 PO HAMLETTE: Yes.

19 MR. OBEDIN: Mr. Ovalle was incarcerated on that
20 date, correct?

21 PO HAMLETTE: Yes.

22 MR. OBEDIN: So you're not supervising him while
23 he's in custody; isn't that correct?

24 PRS ERICKSEN: Objection, Judge.

25 PHO BURNETT: Overruled.

1 PO HAMLETTE: While he's incarcerated I'm still
2 responsible for Warren Ovalle.

3 MR. OBEDIN: Is Mr. Ovalle under your direct
4 supervision while he's incarcerated for a violation of parole?

5 PO HAMLETTE: No.

6 MR. OBEDIN: Thank you.

7 PRS ERICKSEN: Officer -- redirect.

8 Officer, what is Mr. Ovalle's maximum expiration date
9 while he was on parole?

10 PO HAMLETTE: His maximum expiration date is
11 March 17, 2020.

12 PRS ERICKSEN: All right. So had Mr. Ovalle, on
13 October 10, 2017, completed his parole supervision?

14 PO HAMLETTE: No.

15 PRS ERICKSEN: All right.

16 PHO BURNETT: Mr. Ovalle, you could go back to
17 the center, thank you.

18 PRS ERICKSEN: Officer Hamlette, could I ask you
19 again just to take a look at the special condition that was given to Mr.
20 Ovalle regarding no contact with Robert Akre? Could you read that
21 special condition again?

22 PO HAMLETTE: Special condition says that, "I,
23 Ovalle, Warren, middle initial A, acknowledge that the following
24 special conditions have been imposed upon me and that the special
25 conditions will remain in effect until the termination of my legal

1 period of supervision, 3/17/2020, unless otherwise amended in writing
2 by the Department of Corrections and Community Supervision. I will
3 not have contact with the following individual: Akre, Robert." This
4 means that he will not attempt to meet in person, communicate by
5 letter, telephone and electronic device, i.e. computer, or through a
6 third party or via other means, the above individuals without
7 knowledge and permission of my parole officer.

8 PRS ERICKSEN: Thank you, Officer.

9 MR. OBEDIN: And Officer Hamlette, that is while
10 Mr. Ovalle is under conditions of release; is that correct?

11 PO HAMLETTE: That is until the expiration of his
12 parole.

13 MR. OBEDIN: Officer Hamlette, while someone you
14 are supervising is in custody for a parole violation, they are not
15 under--

16 PRS ERICKSEN: Objection.

17 MR. OBEDIN: -- community release, are they?

18 PO HAMLETTE: No.

19 MR. OBEDIN: If a parolee you are supervising is
20 found at their subsequent parole hearing not to have been in violation
21 of their parole, they are then told that they are being returned to
22 supervised release; isn't that correct?

23 PO HAMLETTE: Yes.

24 MR. OBEDIN: At this time, on this date, October 10th,
25 , 2017, Mr. Ovalle was in custody on a parole violation; isn't that

1 correct?

2 PO HAMLETTE: Yes.

3 MR. OBEDIN: No further questions.

4 PHO BURNETT: Officer Hamlette -- do you have any
5 questions of Officer Hamlette?

6 PRS ERICKSEN: No, no further questions.

7 PHO BURNETT: Officer Hamlette, while a parolee is
8 in custody, in this case, in a jail, if that parolee exhibit any behavior
9 that would violate the condition of his release, would you be required
10 to write charges and charge the parolee, in this case, Mr. Ovalle, with
11 those behaviors?

12 PO HAMLETTE: Yes.

13 PHO BURNETT: Okay. Anything else?

14 PRS ERICKSEN: No further questions.

15 PHO BURNETT: Any questions?

16 MR. OBEDIN: No.

17 PHO BURNETT: Okay. Thank you very much for
18 coming in.

19 Anything else, PRS Ericksen?

20 PRS ERICKSEN: Nothing else.

21 PHO BURNETT: Will your client testify?

22 MR. OBEDIN: No.

23 PHO BURNETT: Okay. Closing?

24 PRS ERICKSEN: Judge, Department feels that we
25 have clearly established that Mr. Ovalle, in fact, on October 10th,

1 2017, at approximately 2:30 PM in the Suffolk County Correctional
2 facility, located at 15 Glover Drive, Yaphank, New York, violated
3 Rule No. 13, of the conditions of this release, in that, he had contact
4 with his co-defendant Mr. Robert Akre, without the knowledge or
5 consent of his parole officer and contrary to his special condition
6 imposed on November 2nd, 2016. We find this to be a violation in an
7 important respect based on the fact that Mr. Ovalle and Mr. Akre were
8 co-defendants in a very serious crime that involved the mutilation of
9 Mr. Akre's brother while being --

10 MR. OBEDIN: Objection to the term "mutilation".

11 PRS ERICKSEN: Judge, it's my closing statement.

12 It's not evidence.

13 PHO BURNETT: Is this knowledge that's reported to
14 the Court when he was sentenced? Is it in the pre-sentence
15 investigation?

16 PRS ERICKSEN: I couldn't say, but I will give you --
17 I'm going to read to you a copy of the instant offense from the
18 Violation of Release report, Judge. "The victim was handcuffed to a
19 toilet and restrained for a period of more than 12 hours and was repeatedly
20 whipped with a length of coaxial cable and had very little freedom. While
21 Warren A. Ovalle and his co-defendant was asleep, the victim was able to break
22 free by breaking the toilet bracket.

23 Additionally, the prior custody of Mr. Ovalle, parole
24 officers went to Mr. Ovalle's residence where Mr. Akre was seen,
25 actually exiting the back door of the residence.

1 MR. OBEDIN: Objection. Has nothing to do --

2 PHO BURNETT: Sustained.

3 PRS ERICKSEN: Ovalle was actually found at the
4 residence --

5 MR. OBEDIN: Objection.

6 PHO BURNETT: There was testimony by the officer
7 that she met Mr. Akre on 9/18 at the parolee's residence, that's how
8 she also recognized Mr. Akre.

9 Go ahead.

10 PRS ERICKSEN: Mr. Akre was apprehended and
11 found carrying felony weight marijuana and scales.

12 PHO BURNETT: Sustained.

13 MR. OBEDIN: Thank you.

14 PHO BURNETT: Just regarding what was testified to
15 here you can close on.

16 PRS ERICKSEN: All right.

17 PHO BURNETT: No new information.

18 PRS ERICKSEN: All right. All right. Judge, based
19 on the seriousness of the instant offense, the Division gave a very
20 important special condition of the no contact between the two
21 individuals. And we feel that this is a violation in an important
22 respect based on the fact that they were given this no-contact
23 condition, regardless of where the contact occurred. Mr. Ovalle was
24 still under the supervision of parole until his maximum expiration
25 date of 3/17/2020, as noted in the special condition and on his release

1 sheet.

2 Therefore, we feel that we have very easily proven
3 probable cause that they did have contact.

4 PHO BURNETT: Thank you.

5 Counselor?

6 MR. OBEDIN: Clearly, Your Honor, they have not
7 met their burden here of probable cause. When an individual on
8 parole supervision is violated, for parole, he then becomes an inmate.
9 He is no longer on parole supervision. The regulations themselves
10 indicate, in terms of conduct of a hearing, Section 8005.7(a)(6),
11 If the charges alleging a violation of parole are not sustained
12 at the violation hearing, the warrant will be lifted and the releasee
13 "restored to supervision". That cannot be defined in any
14 other way. It means that the individual, while incarcerated, is not on
15 supervision. That was a special condition of his release.

16 Yes, I would agree with the Court in questioning
17 Officer Hamlette; that if Mr. Ovalle, perhaps, committed a new crime,
18 an assault, if a new charge were brought against him while in custody,
19 that could be some type of violation, but not any special condition that
20 only regards Mr. Ovalle's release while on supervision. You cannot
21 find that the definition of "restored to supervision" has more than one
22 meaning.

23 While Mr. Oval is in custody, he is not under the
24 supervision of parole. And that condition cannot be held against him.
25 Additionally, Officer Hamlette indicated that she read the special

1 conditions to Mr. Ovalle but never actually had him sign them. The
2 rules and regulations of parole specify, specifically, that every time a
3 parolee gets a new parole officer to supervise them, that parole officer
4 is required to read the special conditions to the parolee and have the
5 parolee acknowledge by signing that he understands those
6 conditions. That was not done here. But I don't think we ever have
7 to get to that. But if the Court finds that we do, there's that as well.
8 They have not met their burden, as small as it is.

9 PHO BURNETT: Thanks, counselor.

10 So regarding the special condition that was given to
11 Mr. Ovalle by Officer Evans and was reiterated by Officer Hamlette
12 when she met with him on 3/31/2017. Counsel, I'd like for you to
13 show me that document that DOCCS provided that every time a
14 parolee is given to a new parole officer they have to sign a special
15 condition. There is no such regulations. Once the special conditions
16 is reviewed by the current parole officer, that's all that it takes.

17 Now, regarding the charge, that on 10/10 of 2017 at
18 approximately 2:30 PM, Mr. Ovalle had contact with a person he's not
19 supposed to have contact with by signing a special condition not to
20 have such contact, and that is of Robert Akre. Officer Menciairelli
21 testified that she did supervise Mr. Akre, she identified Mr. Akre on
22 the video. This interaction with Mr. Akre and Mr. Ovalle was
23 definitely not accidental, it was a planned and accepted visit. Mr.
24 Akre went to the Yaphank jail where he had to sign in, he had to wait
25 to be seen. Mr. Ovalle accepted the visit by sitting down with Mr.

1 Akre for way over ten minutes or so interaction. They hugged each
2 other, embraced each other at the onset of the interview and at the end
3 of the interview. Clearly, it's a cordial, friendly interaction.

4 With that being said, Mr. Ovalle, I do find probable
5 cause to Charge No. 44, Rule No. 13. That on 10/10/2017 at
6 approximately 2:30 PM at the Yaphank County Correctional Facility,
7 located at 15 Glover Drive, in Yaphank, New York, you, Mr. Ovalle,
8 violated that rule, Condition No. 13 that you're not supposed to have
9 contact with Mr. Akre. And, as evidenced by the videotape, that was
10 clear that you did have contact with him. That was without
11 permission of your parole officer. And that condition was imposed on
12 November 2nd, 2016.

13 This probable cause finding is a violation in an
14 important respect and you will be held over for your final hearing.
15 That final hearing will be scheduled for January 18, 2018, to be held
16 here at the Riverhead County Jail.

17 Record is closed.

18 MR. OBEDIN: May I just ask the Court one thing?

19 PHO BURNETT: Sure.

20 MR. OBEDIN: Is it the Court's finding that Mr.
21 Ovalle, while an inmate on a violation of parole, was still under the
22 supervision directives, the special conditions of his parole?

23 PHO BURNETT: As long as Mr. Ovalle has not
24 reached his maximum expiration, he is under parole supervision,
25 when he's released he's in the community being supervised. So as

1 long as he hasn't reached his maximum expiration of March 13, 2020,
2 Mr. Ovalle is on parole and he has to comply with the conditions of
3 his release, even when he's in custody in a jail or a lock up. Yes.

4 MR. OBEDIN: Okay.

5 PHO BURNETT: Thank you everyone.

6 PRS ERICKSEN: Thank you.

7 MR. OBEDIN: Thank you.

8 PHO BURNETT: Record is closed.

9 (Whereupon, this proceeding was concluded.)
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CERTIFICATE

I, Sara Galante, Court Reporter and Notary Public, in and for the State of New York, do hereby certify that I attended the foregoing proceedings, took stenographic notes of the same, and that the foregoing, consisting of 58 pages, is a true and accurate copy of same and whole thereof.

Dated: December 13, 2017

Sara Galante
Sara Galante

EXHIBIT 9

CERTIFIED COPY

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF SUFFOLK

3 PEOPLE OF THE STATE OF NEW YORK,
4 ex rel WARREN OVALLE,

WRIT OF
HABEAS CORPUS

5 Petitioner-Appellant,

6 -against-

7 MICHAEL FRANCHI, Warden of Suffolk County
8 Correctional Facility,

9 Respondents.

10
11 Wednesday, January 31, 2018
12 Suffolk Supreme Court
13 Riverhead, New York

14 BEFORE:

HONORABLE JAMES HUDSON
Acting Supreme Court Justice

15
16 APPEARANCES:

17 STATE OF NEW YORK
18 OFFICE OF THE ATTORNEY GENERAL
19 ERIC T. SCHNEIDERMAN
20 Attorney for Respondent

300 Motor Parkway
Suite 320
Hauppauge, New York 11788
BY: LORI PACK, ESQ., Assistant Attorney General

21
22 NAIBURG, OBEDIN & WEISSMAN, ESQS.
23 Attorneys for Petitioner Warren Ovalle
320 Carleton Avenue
Central Islip, New York 11722
24 BY: GLENN OBEDIN, ESQ.
25

1 THE CLERK: Will Warren Ovalle please step up and I
2 will need appearances by Counsel, please.

3 THE COURT: Do we place on the record that this is
4 a Special Term of the Supreme Court pursuant to Article 10
5 of the Civil Practice Law and Rules.

6 THE CLERK: Sounds perfect.

7 THE COURT: All right. Thank you.

8 Good morning, Counsel.

9 MR. OBEDIN: Good morning, Your Honor.

10 THE COURT: Good morning, Mr. Ovalle. I wish we
11 could have reunited under more pleasant circumstances. I
12 recall meeting you quite a number of years ago and I was the
13 Judge who sentenced you. Please have a seat, Mr. Ovalle.
14 Would you like a glass of water or anything, sir?

15 WARREN OVALLE: No, sir.

16 THE COURT: All right. If you wish at anytime to
17 confer with Mr. Obedin, we won't stand on ceremony. Feel
18 free to let him know that you wish to confer with him in
19 private and we'll stop the proceeding immediately. All
20 right, sir?

21 WARREN OVALLE: Yes.

22 THE COURT: Thank you.

23 MR. OBEDIN: Your Honor, for the record, Naiburg,
24 Obedin and Weissman by Glenn Obedin, 320 Carleton Avenue,
25 Suite 1400, Central Islip, New York.

1 THE COURT: Thank you.

2 On behalf of the Petitioner, you have filed this
3 writ of habeas corpus, the application for the writ of
4 habeas corpus, and the State of the sovereign people
5 represented by Miss Pack have submitted an affirmation in
6 opposition and you have been afforded the opportunity for
7 reply which I have also reviewed, Counsel.

8 Now, we had a brief conference before I took the
9 bench and I had a discussion as far as a point of
10 clarification in the reply --

11 MR. OBEDIN: Yes.

12 THE COURT: -- regarding the status or the use of
13 the term post-release supervision versus community
14 supervision and whether that was a distinction versus just a
15 clarification, so if you would clarify that for the Court's
16 edification, then I would be happy to hear any further
17 remarks that you'd like to have although since you do have
18 the burden of proof, the law does give you the right to
19 speak last, so.

20 MR. OBEDIN: However you want to do it, Your Honor.
21 Do you want Miss Pack to go first, want me to go first?

22 THE COURT: Usually -- we had a discussion
23 regarding the opposition by the State. It did not appear on
24 the brief, correct me if I'm wrong, Miss Pack, to dispute
25 any of the alleged facts. It was the legal arguments that

1 the State respectfully took exception to. So if that is the
2 case, then would there be any objection to the stipulation
3 that the facts as alleged are deemed established.

4 MR. OBEDIN: The facts which brought us here, the
5 facts which alleged the violation of parole we can stipulate
6 are accurate.

7 MS. PACK: I'll stipulate to that, Your Honor.

8 THE COURT: Thank you very much. So that would
9 obviate the need to hear testimony or other evidence at this
10 time. Instead we'll confine ourselves to the excellent
11 arguments for which, for the record, I wish to compliment
12 both yourself and Miss Pack that the briefs that have been
13 submitted in this matter give credit to our profession and
14 both your clients are well served.

15 MS. PACK: Thank you.

16 MR. OBEDIN: Thank you, Your Honor.

17 THE COURT: Please.

18 MR. OBEDIN: So the thrust of our argument is that
19 when an individual is placed on parole, post-release
20 supervision, there are many conditions placed upon that
21 individual. There are standard conditions such as you
22 cannot be arrested for a new crime, et cetera. Then there
23 are special conditions which only come into effect if the
24 individual is in fact placed back out in the community. For
25 instance, a condition indicating a curfew at their house.

1 That's certainly a condition of parole, but it's also
2 specifically a condition of community supervision.

3 If the person is incarcerated, for instance in this
4 case on a parole violation, that condition no longer is in
5 effect. Same way with the standard condition that
6 Mr. Ovalle not be allowed to fraternize with known felons.
7 He's being held in jail. Clearly he is fraternizing with
8 known felons everyday. That's a condition of community
9 release, not the standard condition of parole. The same can
10 be said for not being able to get visits from an individual
11 while on release. This was a condition that was written as
12 a condition of his release.

13 I questioned the parole officer at the preliminary
14 hearing. I asked the parole officer, did you tell the jail
15 that Mr. Ovalle was not allowed to receive visits from
16 Mr. Akre. Did you tell them that he's not allowed to. Did
17 you de-authorize that. She said no.

18 Mr. Ovalle doesn't make the visits. A visit is
19 made, he's brought down and a visitor is there. The reason
20 that parole didn't de-authorize such visits is because they
21 were not legally allowed to. Mr. Akre can make a visit to
22 see Mr. Ovalle and while Mr. Ovalle is incarcerated, he's
23 not subject to the special conditions of community
24 supervision. There is an absolute distinction.

25 I argued at the preliminary hearing in my summation

1 that if the case here were that Mr. Ovalle were charged with
2 a new assault while being held in the facility, that clearly
3 would be a violation of his post-release supervision, his
4 parole, because that's a standard condition that as long as
5 an individual is on parole or post-release supervision, they
6 cannot violate, but the special conditions of release to the
7 community that only are effected while a person is in actual
8 community release, those are distinct. Any other reading
9 would not make sense. They have to be distinct. And that's
10 our argument. That's the crux of our argument.

11 And while Mr. Ovalle is being held in jail on a
12 violation of parole or for whatever reason, if he were
13 arrested on a new crime and being held in the jail, his
14 special conditions that are only applicable during community
15 release would have to be suspended. Otherwise the result
16 would be absurd.

17 For instance, I'll just say it one more time, if he
18 had to still maintain the condition of not fraternizing with
19 known felons, it would be upon him and incumbent upon him to
20 indicate to the jail that he needs to be placed in solitary
21 confinement else he would be in violation of his conditions
22 of community release. That doesn't make any sense.

23 Additionally, if they're going to argue that, well,
24 that obviously he can't be in control of that and he's not
25 in control of his curfew while he's incarcerated, then I

1 would say it would be incumbent upon parole to visit
2 Mr. Ovalle and to lay out for him which of the conditions of
3 community supervision he still has to abide by and which
4 ones he doesn't have to abide by.

5 Any other reading, again, in my opinion, would not
6 make sense.

7 THE COURT: Thank you very much, Mr. Obedin.

8 The Court will hear from the People of the State of
9 New York. The Sovereign People of the State of New York as
10 a distinction from the People of the State of New York,
11 represented by the Attorney General.

12 MS. PACK: Thank you, Your Honor. Lori Pack for
13 New York State Division of Corrections and Community
14 Supervision.

15 Your Honor, Defendant's Counsel's argument is based
16 upon his interpretation of the law. The law is very clear
17 and the crux of this issue is whether the special conditions
18 attached to post-release supervision continue while an
19 inmate is incarcerated.

20 The law is very clear on that. In fact, there's
21 specific case law that holds that these conditions continue
22 while an inmate is in jail, and I have cited them in my
23 papers. For instance, an order, a special condition not to
24 contact a victim of a rape when the inmate was calling that
25 victim. There is not a single case that has held, that I

1 can find, that has held that special conditions do not
2 follow an inmate when they are incarcerated.

3 And the law is clear. It says -- the Executive Law
4 says, a person shall, while on parole, a conditional
5 release, be in the local custody until expiration of the
6 maximum term of a period of sentence or expiration of the
7 period of supervision or return to an institution under the
8 jurisdiction of DOCCS.

9 It says that when a person is released to
10 post-release supervision, that post-release supervision
11 continues until they are released from post-release
12 supervision after their maximum expiration date and nothing
13 else. Whether they're incarcerated or they go to a Willard
14 Program or they go to a Halfway Program, nothing else
15 impairs the special conditions.

16 The special conditions are part of post-release
17 supervision. There is no distinction between conditions
18 that are attached to post-release supervision when somebody
19 is out in the community or as an inmate in either a state or
20 a local facility. There is no distinction.

21 And one final thing. I wanted to address the
22 Defendant's argument that it is impossible for special
23 conditions to follow an inmate because very often one of the
24 special conditions is that they cannot fraternize with known
25 felons.

1 While on the outside, if that were the case, it's
2 simply a matter of impossibility. If it is impossible for a
3 parolee to abide by conditions of curfew or fraternizing
4 with known felons, then they don't have to comply with that.
5 This is common sense. When they go to their report day and
6 they're out in the community, they report to their parole
7 officer and they're sitting in a waiting room with anywhere
8 between five and 50 other known felons. That is known to
9 parole. That is okay and that is condoned by the parole
10 officer. The parole officer knows that when you're in the
11 Suffolk County Correctional Facility, you're going to be
12 surrounded by known felons.

13 It's the same argument when they're out in the
14 community because it's the same conditions and the parole
15 officers know that when they're sitting there on report day,
16 they're sitting in a waiting room surrounded by known
17 felons.

18 And there is not a single case in New York State,
19 to my knowledge, that holds that special conditions do not
20 continue when a person under post-release supervision is
21 incarcerated. On the contrary, there is a great deal of
22 case law or a significant amount of case law that holds that
23 these special conditions do apply.

24 I just would like Your Honor to articulate the
25 reasons for His decision on the record, if you wouldn't

1 mind.

2 THE COURT: If I may ask a question of Counsel.
3 The State has argued that, in part, the petition is
4 premature. Could you respond to that so that in that there
5 was a preliminary hearing, but no final revocation hearing.
6 Please respond to that.

7 MR. OBEDIN: I believe the State only argued that
8 with regard to one particular argument which I have omitted
9 from my argument today, so.

10 THE COURT: However your papers speak --

11 MR. OBEDIN: Okay. So I will --

12 THE COURT: If you wish, you can rely on your
13 papers in that regard. I don't want to put you on the spot
14 because as we all are taught in law school, vox emissa
15 volat; litera scripta manet which is the spoken word flies,
16 but the written letter remains, and I consider the
17 statements made by Counsel, as eloquent as they are, to be
18 merely an addendum to the eloquence of the papers that have
19 already been presented before me.

20 MR. OBEDIN: Again, Your Honor, I'll just state for
21 you that I remain silent with my arguments today with regard
22 to that particular issue and I'm relying upon the arguments
23 that I'm making here and the State did not deem these issues
24 premature. The issue of the legal definition of community
25 supervision, post-release supervision, that's the argument

1 that I'm bringing before you. I would --

2 THE COURT: I'm sorry, I don't mean to interrupt
3 you, but we have to chose our words with care. Beware the
4 negative pregnant. Qui tacet consentire videtur. When you
5 say that you're silent on it, you're not conceding the
6 State's --

7 MR. OBEDIN: I rely on my papers.

8 THE COURT: All right. Very good. I just wanted
9 to clarify because --

10 MR. OBEDIN: Yes. And if I may just, since I have
11 the burden, if I may have just a final word.

12 THE COURT: Yes, certainly.

13 MR. OBEDIN: Again, I think that the Attorney
14 General is misinterpreting the difference between
15 post-release supervision and community supervision. There's
16 a difference. When an individual is first sentenced to
17 state term, they're sentenced to a determinate term of
18 prison or an indeterminate term of prison and then a period
19 of post-release supervision which has become the word for
20 parole in our State. That's what we call it, post-release
21 supervision. Community supervision is a separate and
22 distinct part of post-release supervision and to argue that
23 they're one and the same would be nonsensical.

24 We cite cases, People ex rel. Richman v. Warden,
25 Bronx House of Detention. A plain reading of the statute,

1 in particular use of the word restored, makes abundantly
2 clear that an individual is not on community supervision,
3 community supervision, while in violation status and
4 therefore not subject to the conditions or special
5 conditions imposed.

6 We never argued that Mr. Ovalle wasn't still on
7 post-release supervision or parole. What we're arguing is
8 that he cannot possibly violate a condition of community
9 supervision, community release while being on post-release
10 supervision, but held in a facility.

11 THE COURT: Thank you. The case that Counsel cited
12 is found at 122 Miscellaneous 2d 957, Supreme Court Bronx,
13 1984. Thank you for bringing that case to the Court's
14 attention. I did enjoy reading it. Thank you very much.

15 MR. OBEDIN: You're welcome.

16 THE COURT: The Court is prepared to rule at this
17 time. The Court thanks Counsel for the courtesy copies of
18 their respective briefs that were submitted in this matter
19 that allowed the Court to review it, be guided by the cases
20 that were cited by Counsel as well as to do its own research
21 and I'm prepared to rule from the bench at this time.

22 Mr. Ovalle, you're represented here -- please have
23 a seat, Counsel. You don't have to remain standing.

24 MR. OBEDIN: Thank you, Your Honor.

25 THE COURT: Mr. Ovalle, represented here by

1 Mr. Obedin, contends that the defendant -- relator is the
2 proper term actually, was not on post-release supervision on
3 December 10 of 2017 and that contact with Mr. Robert Akre at
4 the Suffolk County Jail was not a violation of post-release
5 supervision quote, in an important respect, which is a
6 direct quotation from the applicable statute, Executive Law
7 Section 259-i (3)(c)(iv).

8 Mr. Ovalle was convicted of assault in the second
9 degree on January 7, year 2010 and received six years
10 incarceration to be followed by five years of post-release
11 supervision. Incarceration was completed on March 17 of
12 2015 and he was released to post-release supervision at this
13 time. The maximum expiration date of same is March 19 of
14 2020.

15 Now, Mr. Obedin relies on Penal Law Section 70.43
16 (3)(b) and section 70.43 -- excuse me, that same subdivision
17 and definition of delinquency and cites to the case of
18 People versus ex rel. VanFossen and Dillon found at 72 A.D.
19 2d 166, Fourth Department 1980.

20 Additionally, he cites to the case of People versus
21 ex rel. Gonzalez versus New York State Board of Parole, 103
22 A.D. 2d 855, Second Department 1984 which I particularly
23 enjoyed reading that decision and as I recall, it was
24 authored by Justice Lawrence Bracken of happy memory.

25 Now, reading from that decision, and great emphasis

1 is placed on it by Mr. Ovalle, and I quote, "respondent's
2 actions indicated reasonable diligence in attempting to
3 locate petitioner." I'm reading the citation. "His
4 sentence was properly interrupted by the declaration of his
5 delinquency. The interruption continued until April 20 of
6 1983 when he was returned to an institution under the
7 control of the New York State Department of Correction.
8 Following his release from federal custody, petitioner had a
9 continuing obligation to report to the division of parole.
10 Petitioner knew he was declared delinquent and admitted the
11 charges. The circumstances which led to his enjoying nine
12 months of freedom between his release from federal custody
13 and his apprehension cannot be said to have been beyond his
14 control. Special term correctly refused to credit him with
15 these nine months. However, the correct maximum expiration
16 and conditional release dates were calculated from the
17 incorrect date of delinquency."

18 Now, that is taken from pages 855 through '56 of
19 the decision. Note the word "interruption". I find,
20 Counsel, although you argue it well, that it's taken out of
21 context. It refers to the tolling of the sentence, not
22 extinguishing the parole itself or the terms thereof.

23 The Petitioner's remaining case law is similarly
24 distinguishable from the matter at hand, but we'll address
25 some of that later.

1 In opposition to Mr. Ovalle's application,
2 Miss Pack cites to, inter alia, Oriole versus Saunders and
3 that's 66 A.D. 3d 280, First Department 2009 which in
4 relevant part states: "The automatic -- " again I quote:
5 "The automatic revocation of petitioner's parole triggered
6 by his conviction of a new felony during the period when he
7 absconded from his parole did not preclude Division of
8 Parole from taking any further action on parole violation
9 charges that preexisted the new felony." Citing to
10 Executive Law Section 259-1(3)(d)(iii).

11 And it further states: "A final revocation hearing
12 with respect to the earlier charges would serve the purpose
13 of determining whether petitioner had become delinquent in
14 observing his parole obligations, thereby interrupting the
15 running of his earlier sentence as of the date of the parole
16 violation charges."

17 Also the State cites to People ex rel. Hayes versus
18 New York State Department of Correctional Services found at
19 78 A.D. 3d 1591, Fourth Department 2010, leave to appeal
20 denied 16 New York 3d 705 in 2011.

21 And it states in relevant part: "As a parolee,
22 petitioner remained in the legal custody of the Division of
23 Parole", it cites the statute, "until expiration of the
24 maximum term or the period of sentence or expiration of the
25 period of supervision, including any period of post-release

1 supervision or return to the custody of the respondent.
2 Thus, petitioner was on parole despite the fact he was
3 incarcerated when he committed the assault in question."

4 And that quote is found at pages 1591 through '92.

5 Miss Pack also cites the People versus Bowen found
6 at 6 Miscellaneous 3d 760, Supreme Court Kings County 2005.
7 And I'm reading from that decision and that involved a
8 person committing the promoting prison contraband in the
9 second degree and the Court found that he was "in violation
10 of his probation despite the fact that he was serving the
11 jail component of his sentence before the commencement of
12 his supervision by probation. Thus, his probation may be
13 revoked and he may be resented to a longer period of
14 incarceration without probation." And that's at page 762 of
15 the Miscellaneous.

16 We do find, however, although it was well argued as
17 I expected by the State, this case to be of limited utility
18 because it confined its analysis to a six-month
19 incarceration and a five-year probation split. The theory
20 is the same and I can understand why it was cited, however
21 the statutes are different, so the Court is reluctant to
22 rely upon it as persuasive authority.

23 The Attorney General also cites to the holding of
24 People versus Filipowicz found at 111 A.D. 3d 1022, Third
25 Department 2013. In that particular case, the defendant had

1 pled guilty to rape in the second degree and criminal
2 contempt in the first degree and was sentenced to an
3 aggregate term of probation of ten years. In addition, a
4 ten year order of protection was issued precluding the
5 defendant from having any contact with the victim. "A
6 probation officer filed an affidavit of violation alleging
7 that while the defendant was incarcerated at the Ulster
8 County Jail on an unrelated matter, he enlisted another
9 inmate to call the victim several times."

10 So in that particular case, that was upheld as far
11 as the status of the defendant being under probation
12 supervision at the same time as being incarcerated. And I'm
13 quoting from pages 1022 through 1023 of the A.D. 3d opinion.
14 We find these facts to be analogous to the case before us.

15 Mr. Obedin has submitted a reply clarifying that
16 Mr. Ovalle was actually not subject to the conditions of
17 community supervision and you very carefully, and I commend
18 you, Counsel, as distinguishing how that is a part of, but
19 not identical to post-release supervision, it's an aspect
20 of, and cites the case of Richman on behalf of Williams
21 versus the Warden of the Bronx House of Detention.

22 And in this particular case law, the Court held
23 that the relator was denied his right to attend the
24 preliminary revocation hearing and it dealt with a purported
25 waiver of a right to be present. The Court found he wasn't

1 afforded a preliminary hearing within 15 days of the
2 execution of a parole warrant. These limited facts and
3 holding do not permit a reasonable extrapolation to support
4 Mr. Ovalle's argument before us today. I find it's too
5 factually distinguishable.

6 Mr. Obedin also cites to People versus ex rel. Levy
7 versus Dalsheim found at 66 A.D. 2d 827, that's Second
8 Department 1978 and affirmed 48 New York 2d 1019, falls for
9 this proposition, namely that Mr. Ovalle was not actually
10 subject to the conditions of community supervision while in
11 violation status and not subject to conditions or the
12 special conditions imposed.

13 So let us look at the facts of that particular case
14 and in that particular case, the Court was reviewing an
15 application for -- excuse me, a writ which sought to
16 overturn a determination regarding a final parole revocation
17 hearing. In that particular case, it was clear that the
18 respondents had violated Section 259-i of the Executive Law
19 because they had not held a hearing within 90 days of the
20 probable cause determination. So once again, the holding
21 was limited to a declaration regarding the failing to hold
22 that hearing.

23 I've heard no argument that the purported actions
24 of the Respondent or failure to receive in a timely fashion,
25 so I find ultimately the Petitioner, to prevail on this

1 point, must distinguish *People versus Filipowicz* just cited
2 before. And it is no easy task, although knowing what is at
3 stake here because there is nothing dearer to our hearts
4 than liberty and to seek it.

5 Let us remember the language found in New York
6 Executive Law Section 259-i. "*Persons presumptively*
7 *released, paroled, conditionally released or released to*
8 *post-release supervision from an institution under the*
9 *jurisdiction of the department shall*" -- I'm going over
10 this, it's not literal, I'm jumping to a different
11 section -- "*shall, while on presumptive release, parole,*
12 *conditional release or post-release supervision, be in the*
13 *legal custody of the department until expiration of the*
14 *maximum term or period of sentence or expiration of the*
15 *period of supervision including any period of post-release*
16 *supervision or return to imprisonment in the custody of the*
17 *department as the case may be.*"

18 Now, note the words that I use from 259-i. The use
19 of the word "*imprisonment*", not simply custody, not simply
20 delinquency, and once again we're guided by a motto, to use
21 the language of the old law, *expressio unius est exclusio*
22 *alterius*, which means that when one thing is said, all
23 others are excluded. The writing in this case, the statute
24 says one thing, all others are excluded.

25 And I also draw Counsel's attention to the opinion

1 found in the case of People versus Overton, 86 A.D. 3d, page
2 four, Second Department 2011, which states, and it actually
3 quotes the matter of Oriole versus Saunders: "A convicted
4 person released from incarceration on parole continues to
5 serve his or her sentence while on parole and earns credit
6 toward the maximum expiration date of the sentence unless
7 and until the Division of Parole declares that person to be
8 delinquent and revokes parole."

9 Note the inclusive language.

10 Based on the foregoing, we find that the Petitioner
11 has failed to establish that he was not subject to the terms
12 and conditions of his post-release supervision.

13 Remaining argument is that contact with Robert Akre
14 at the Suffolk County Jail was not a violation of
15 post-release supervision in an important respect.

16 The Attorney General argues that this was a
17 preliminary determination and therefore a premature claim.
18 If such a determination is made at the final hearing, then
19 it will be appropriate to review. That is their position.

20 In addition to the cases cited by Miss Pack, the
21 case of People versus ex rel. Ariola versus Sears at 53 A.D.
22 3d 1001, Third Department 2008 also stands for this
23 proposition.

24 However, we come back to the case cited by
25 Mr. Obedin, People versus ex rel. Van Fossen versus Dillon,

1 72 A.D. 2d 166. The facts therein involved a habeas
2 proceeding of a preliminary hearing and the Court heard it
3 on the merits.

4 So let us consider then, this matter is ripe for
5 review. This provides small consolation for Mr. Ovalle,
6 unfortunately, since we have already found that Mr. Ovalle
7 was on post-release supervision simultaneously with his
8 detention at the Suffolk County Jail.

9 The finding at the preliminary hearing, namely that
10 he had violated the special condition of not having contact
11 with Mr. Akre, cannot be said to be incorrect or not an
12 important respect of his post-release supervision.

13 The language found in VanFossen versus Dillon
14 actually argues the State's case in this regard. I quote
15 from that decision at page 169. *"Upon finding that there*
16 *was evidence at a preliminary parole violation hearing*
17 *which, if believed, was sufficient to support a finding of*
18 *probable cause and that required procedural rules were*
19 *followed, the Court's power to review is exhausted and it*
20 *must dismiss a writ of habeas corpus."*

21 We also find that the evidence at a preliminary
22 parole violation hearing which, if believed, was sufficient
23 to support a finding of probable cause and that required
24 procedural rules were followed.

25 Accordingly, your exception being noted, Counsel,

1 the writ is dismissed. Thank you.

2 Mr. Ovalle, I do not take any pleasure in this
3 ruling. I'm serious what I said about liberty being the
4 dearest things to our hearts, here and in many ways in life,
5 there are people in life or all over this world and under
6 our country's flag, but I took an oath to uphold the law and
7 I searched for any case which I could find which I felt, or
8 any statute which I felt could support the excellent
9 argument. It has -- there is a common sense to Mr. Obedin's
10 argument, but it's for the legislature to come up with that
11 remedy, not for the Court to fashion its own.

12 Yes, Mr. Ovalle.

13 WARREN OVALLE: Your Honor, during my
14 incarceration, I studied. This (indicating) is actually the
15 Assembly book for the bill for the merger of the two
16 agencies, parole and corrections, to form the DOCCS, and on
17 page 72 of it, and in 259 it clearly distinguishes that and
18 because this is a new legislation, and Mrs. Pack, she argued
19 everything past 2011 of February 1st in itself. She didn't
20 argue February 1st, 2011 and now. It's new legislation of
21 which this bill is written in. And it states that community
22 supervision means the supervision of individuals released
23 into the community on temporary release, presumptive
24 release, parole, conditional release, post-release
25 supervision or medical parole. And then it also states --

1 and that's line 42.

2 Also it states on line 23 of the same page, an
3 inmate means a person committed to the custody of the
4 department of corrections or a person convicted of a crime
5 and committed to the custody of the sheriffs or the county
6 jail, the local department of corrections.

7 I am in custody of the Sheriffs Department. There
8 is no distinction at all that I am called an inmate or a
9 prisoner. I am not called a parolee. I'm not called a
10 releasee. It is unequivocal that I am definitely an inmate
11 and I am in their care.

12 So parole, if parole could have said at any point
13 in time, Mr. Ovalle, while you're on parole or you deal with
14 any stipulations, violations while you're still in our care
15 and that you still have to abide by our rules, it would be a
16 different story, but they have not written it and I haven't
17 gotten special conditions and went through five different
18 parole officers and not once was this ever written because
19 if this does in fact mean that while you're incarcerated
20 you're still in the supervision of parole, then clearly
21 every parolee from here on in would have violated their
22 terms in one respect or another because of the things that
23 were going on in jail itself, especially Upstate New York
24 where they hold eight to ten thousand parolees on
25 violations.

1 This bill was written after the fact. Everything
2 that's cited from Mrs. Pack's summation, it is previous to
3 this (indicating). This is new law (indicating). There's
4 nothing here today. We are making that.

5 This is stating that I am an inmate, a prisoner
6 upon the Suffolk County Sheriffs Department under the Warden
7 of Michael Franchi. I am not a releasee or parolee. I have
8 a preliminary hearing, yes, that found me to be delinquent
9 and it's holding me to a final revocation. But once again,
10 the revocation is revoked. It clearly states revocation to
11 be revoked of.

12 So I understand your ruling, but I'm asking you,
13 please, I have suffered enough. I did my six years of
14 incarceration. Parole has not been kind to me at one state
15 or another. I am asking you to allow me to go home to my
16 family and be restored so I can be productive. They have
17 denied me that right.

18 THE COURT: Mr. Ovalle, do not think this doesn't
19 weigh upon me. I am the man who sentenced you to prison and
20 I took no pleasure in that and I took no pleasure in this.
21 I felt I was doing my duty. What you have brought to my
22 attention finds no purchase as of yet in any of the case law
23 that I could research that had a bearing on your case. And
24 the cases of the -- particularly the case of the Appellate
25 Courts bind me as surely as any statute and that is why I

1 feel I had to rule the way I did.

2 But you have made a record. You made it well.
3 You're articulate yourself and you had outstanding Counsel
4 and it is for the Appellate Courts now to decide whether I
5 decided correctly.

6 I wish you good luck, sir.

7 MR. OBEDIN: Thank you, Your Honor.

8 THE COURT: Thank you very much, Mr. Obedin.
9 Thank you, Miss Pack.

10 (Whereupon, proceedings concluded.)

11 * * * * *

12 C E R T I F I C A T I O N

13 I, Barbara J. Skinder, a Senior Court Reporter for
14 the Supreme Court of the State of New York, County of
15 Suffolk, do hereby certify that the foregoing transcription
16 of the within proceedings held on Wednesday, January 31,
17 2018 before Honorable James Hudson is a true and accurate
18 transcription of my stenographic notes.

19 Furthermore, photocopies made of this transcript by
20 any party cannot be certified by me to be true and accurate.

21 Therefore, only those copies bearing an original
22 signature in blue ink are official certified copies.

23
24 3/14/2018
Dated

25
Barbara J. Skinder

HON. JAMES C. HUDSON

clerk 11/31/2018

EXHIBIT 10

1 STATE OF NEW YORK
2 EXECUTIVE DEPARTMENT
3 DEPARTMENT OF CORRECTIONS &
4 COMMUNITY SUPERVISION
5 *****
6 In the matter of
7 WARREN OVALLE
8 NYSID #09347560J
9 WARRANT #762686
10 DIN #10R0095
11 INSTITUTION: Suffolk County Jail

2 *****

3 HEARING TYPE: Final Revocation Hearing

4 LOCATION: 15 Glover Drive
Yaphank, NY 11980

5 DATE: March 1, 2018

6 BEFORE: MARY ROSS
Administrative Law Judge

7 APPEARANCES: E. DEL RIO
Parole Violations Chief

8 GLENN OBEDIN
Attorney for Parolee

9 WARREN OVALLE
Parolee

25 HEARING REPORTER: Sara Galante

1 PROCEEDINGS

2 ALJ ROSS: This is the case of Warren Ovalle,
3 Warrant No. 762686, NYSID No. 09347560J. I'm Administrative
4 Law Judge Mary Ross.

5 Your appearances for the record.

6 PVU CHIEF DEL RIO: Chief Del Rio, Parole
7 Violations Unit.

8 MR. OBEDIN: Glenn Obedin, Obedin, Naiburg, and
9 Weissman, for Mr. Ovalle.

10 PAROLEE: Warren Ovalle.

11 ALJ ROSS: Okay. Before we begin the contested
12 hearing, Mr. Del Rio, is there going to be any recommendations from
13 you?

14 PVU CHIEF DEL RIO: Yes, Your Honor. We've
15 conveyed an offer to Mr. Ovalle's attorney of an 18-month offer on
16 this matter.

17 ALJ ROSS: Okay. And I did counter that with the
18 12-months with the DOCCS alternative program.

19 MR. OBEDIN: Okay. Mr. Ovalle has been made
20 aware of those two offers and he's prepared to go forward with his
21 hearing; is that correct?

22 PAROLEE: Yes.

23 ALJ ROSS: Okay. Are both sides ready?

24 PVU CHIEF DEL RIO: Department is ready, Your
25 Honor.

1 MR. OBEDIN: We are ready.

2 ALJ ROSS: Okay. Mr. Ovalle, it looks like you owe
3 nothing to sentence, you still owe 2 years, 3 months, 16 days to PRS;
4 is that right?

5 PAROLEE: No. March 17, 2020 would be my
6 maximum expiration date.

7 ALJ ROSS: All right. I'm just telling you what the
8 detail sheet says, and that's what I'll go by. But it's really the people
9 upstate that verify that.

10 PAROLEE: Is that because I'm not credited any
11 delinquent time?

12 ALJ ROSS: I have no idea. Yeah, I don't know.
13 Usually, what happens is the people upstate in Albany, they're the
14 ones that certify how much time you have, but that's just the amount
15 of time on the detail sheet which we received.

16 PAROLEE: But that can always be corrected, right?

17 ALJ ROSS: Oh, yes.

18 PAROLEE: So we're probably going off of the
19 November 30th date, the day the violation was lodged, and that would
20 probably be the 2 years, 3 months then.

21 PVU CHIEF DEL RIO: Yeah, 2 years 3 months from
22 the lodge-in of the warrant. That would take you out to 2020.

23 PAROLEE: Right. But I would still get credit from
24 the time that I'm serving?

25 PVU CHIEF DEL RIO: You're getting credit from the

1 September warrant, those things are credited towards as though you
2 were reporting. You don't get any jail time credited as of those days.
3 You get jail time credit for this violation as of November 30th.

4 PAROLEE: So I will be getting credit from
5 November 30th to now?

6 PVU CHIEF DEL RIO: Right now, you have four
7 months already credited towards the 12 months the Court's offering.

8 PAROLEE: Right. Even though there's a delinquent
9 time of September 23rd, do I get September and October?

10 PVU CHIEF DEL RIO: You get that -- if you enter a
11 plea of guilty to November 30th, I'd be willing to do that.

12 PAROLEE: I'm not guilty of anything.

13 PVU CHIEF DEL RIO: I'm just saying.

14 PAROLEE: Right. So if I don't plead guilty, I don't
15 get November to --

16 PVU CHIEF DEL RIO: You get --

17 PAROLEE: -- September to November, I mean?

18 PVU CHIEF DEL RIO: No.

19 PAROLEE: Even though I served the time in jail?

20 PVU CHIEF DEL RIO: You don't get that towards
21 whatever the sentence this Court may or may not impose.

22 PAROLEE: So that means it's interrupting that time
23 and that time does not accrue towards me and that it lay in limbo?

24 PVU CHIEF DEL RIO: No. Anything from
25 September to November period that you were incarcerated on the

1 previous warrant is credited towards your being on parole, so it comes
2 off the back end of the time owed but not towards the jail time credit
3 that this court may impose.

4 PAROLEE: Well, my max-out date is 2020.

5 PVU CHIEF DEL RIO: Yes.

6 PAROLEE: So would, regardless, that change the date
7 of March 17, 2020? That's what I want to know.

8 PVU CHIEF DEL RIO: That would change it.
9 Because if they determine that you owe 2 years, 3 months, 16 days
10 based on the delinquency date of September 23rd.

11 PAROLEE: So if I'm getting delinquency date of
12 September 23rd to November 30th, then violations 1 through 95 will
13 be dismissed at this point because there is no time nor was I on parole
14 nor would I get credit for it?

15 PVU CHIEF DEL RIO: I don't see any of those
16 charges. No charge should be -- you shouldn't be charged with
17 anything.

18 PAROLEE: From September?

19 PVU CHIEF DEL RIO: Yeah. Well, what happens is,
20 I know what you're saying now. Now I understand what you're
21 saying. Apparently, they can charge you for the time period where
22 you were getting visits when you were incarcerated, although it wasn't
23 part of the original warrant. So they can stop your time as of that
24 time. They can go back to that. I mean, I've seen the Department also
25 go back when -- go ahead.

1 PAROLEE: I'm not disputing that.

2 ALJ ROSS: I think we have two lawyers in this room,

3 PVU CHIEF DEL RIO: I'm not one of them.

4 ALJ ROSS: I'm sorry. We have one lawyer and one
5 parole specialist, and they should be the people being doing the
6 talking here today. You want to say something, you talk to your
7 lawyer and your lawyer can convey your point. I'm not having two
8 lawyers on one side.

9 MR. OBEDIN: Okay. So can you give me one
10 moment?

11 ALJ ROSS: Sure.

12 (Whereupon a discussion was held off the record.)

13 MR. OBEDIN: So if the violations all occurred
14 between 9/23 and 11/30, is that --

15 PVU CHIEF DEL RIO: Yeah, that's the dates.

16 MR. OBEDIN: That's correct, right?

17 PVU CHIEF DEL RIO: Yeah, those are the dates.

18 MR. OBEDIN: So is the -- so the allegation is that
19 these violations occurred while Mr. Ovalle was under parole
20 supervision, correct?

21 PVU CHIEF DEL RIO: Right.

22 MR. OBEDIN: Even though he's incarcerated?

23 PVU CHIEF DEL RIO: That's correct.

24 MR. OBEDIN: Okay. So then, wouldn't he have to
25 get credit for that time if he were found to have committed any of

1 these violations?

2 PVU CHIEF DEL RIO: He'll get credit -- the credit
3 was started September 23rd date is sustained. If they sustain the
4 September 23rd date, that's the date that his time stops.

5 Now, with regards to him being incarcerated on a
6 parole warrant --

7 MR. OBEDIN: Yeah.

8 PVU CHIEF DEL RIO: -- even though you're
9 incarcerated in local jail --

10 MR. OBEDIN: Right.

11 PVU CHIEF DEL RIO: -- on a parole warrant, until a
12 judge sustains the delinquency date and determines that you're now a
13 state inmate,,you're a parolee being detained. You're still on parole
14 supervision and required to follow the rules and regulations. It's the
15 same thing that happens if there's a parolee whose being detained in
16 the local jail who involves himself in criminal activity within the jail,
17 assaulting an officer, the Department can bring those charges against
18 him because he's still under parole supervision, although there is a
19 warrant.

20 MR. OBEDIN: Right, but --

21 PVU CHIEF DEL RIO: And I believe that's an
22 argument you guys made before the writ court and the writ court
23 dismissed your charges or your claim, indicating that the writ court
24 supreme court judge determined that an individual in county jail
25 remains under supervision and is subject to the parole conditions,

1 until which time an administrative law judge determines that he's now
2 a state inmate.

3 MR. OBEDIN: I think the question that we're asking
4 though, is in regards to delinquent time.

5 PAROLEE: Yes.

6 MR. OBEDIN: That is the question, so --

7 ALJ ROSS: If any of those charges from September
8 get sustained today --

9 MR. OBEDIN: Yes.

10 ALJ ROSS: -- then he will get credit for that time,
11 right?

12 PVU CHIEF DEL RIO: Right.

13 ALJ ROSS: Exactly.

14 PVU CHIEF DEL RIO: The good time was stopped as
15 of that time: (1)

16 PAROLEE: So if I get credit, and I just want this on
17 the record.

18 MR. OBEDIN: Well, first tell me.

19 (Whereupon a discussion was held between Mr. Obedin and
20 Parolee Ovalle.)

21 MR. OBEDIN: My understanding is you're not getting
22 credit right now because nothing has been sustained yet, but if
23 something is sustained then you will get credit.

24 PAROLEE: But in the beginning he said --

25 MR. OBEDIN: It doesn't matter. It's being clear now.

1 So that's where we stand. As of today, as of right now, you haven't
2 received time for that. But if something were sustained today against
3 you, beginning September 23rd, you would then receive credit.

4 PVU CHIEF DEL RIO: I interpret credit as being
5 jail-time credit. And jail-time credit begins effective as to the lodging
6 of the warrant. This warrant was lodged on November 30th;
7 therefore, the time that he owes of two years, X amount of days or
8 whatever have you, will start November 30th. It would not start
9 September. Understand? So if he gets --

10 ALJ ROSS: He gets parole credit.

11 MR. OBEDIN: But he would get credit for time --

12 ALJ ROSS: On parole.

13 MR. OBEDIN: Okay. So now I'm a little confused.

14 Just so I understand --

15 PVU CHIEF DEL RIO: No. No. In other words --

16 MR. OBEDIN: If he would get credit for -- if he were
17 sentenced to an amount of jail time today, he would get credit dating
18 back to September 23rd --

19 PVU CHIEF DEL RIO: No.

20 MR. OBEDIN: -- on that jail time.

21 PVU CHIEF DEL RIO: No, he would not. If he gets a
22 year sentence today from this court, he would -- his time would be up
23 November 30, 2018, not September.

24 MR. OBEDIN: Okay.

25 PVU CHIEF DEL RIO: But they stopped his time as

1 of September. So the stopping of the clock means he's not getting
2 parole-time credit as of September. He's not getting any credit as of
3 September. But the jail-time credit, what's going to be credited
4 towards him based on any sentence, will begin on September 30.

5 MR. OBEDIN: So what is the credit that would
6 retroactively go back to 9/23 if there's a finding today?

7 PVU CHIEF DEL RIO: That stopped his clock. That
8 charge, if sustained, will stop his clock. In other words --

9 MR. OBEDIN: I don't know what "stop his clock"
10 means.

11 PVU CHIEF DEL RIO: It means that that behavior
12 that occurred on September 23rd --

13 MR. OBEDIN: Yes.

14 PVU CHIEF DEL RIO: -- that behavior has been
15 declared delinquent. Therefore, his parole credit, as time on parole,
16 stop.

17 MR. OBEDIN: As of 9/23.

18 PVU CHIEF DEL RIO: As of 9/23. It starts again on
19 November 30th. Now, he can get that time back by pleading guilty to
20 a charge and get the delinquent time up until the lodging of the
21 warrant.

22 PAROLEE: Or found not guilty.

23 PVU CHIEF DEL RIO: Or found not guilty, right.

24 One or the other.

25 MR. OBEDIN: Okay.

1 PAROLEE: But my question is --

2 MR. OBEDIN: But ask me.

3 PAROLEE: I apologize, Ms. Ross, I know I have a
4 lawyer, but --

5 ALJ ROSS: No. I'm not allowing it.

6 (Whereupon, Mr. Obedin conferred with his client.)

7 MR. OBEDIN: Okay. Well, that's not really an --
8 that's not an argument for here.

9 PAROLEE: But it has to be on the record.

10 ALJ ROSS: I had no involvement in that last case, so I
11 don't know what went on.

12 PVU CHIEF DEL RIO: Neither was I.

13 ALJ ROSS: Nor can I make any rulings.

14 PAROLEE: Right. But we have to put it on the
15 record, in case there is an appeal.

16 ALJ ROSS: But that's why you have a lawyer, and I'm
17 not going to stay say that to you again.

18 MR. OBEDIN: And I'll make that clear, if and when it
19 becomes appropriate today, after we do the hearing.

20 ALJ ROSS: Certainly, you can put that as part of
21 summation, or just make a record of it.

22 MR. OBEDIN: Right. Because as of this point,
23 nothing has been calculated and nothing has been done.

24 ALJ ROSS: Right. And all of this is on the record
25 right now. We're on the record right now.

1 MR. OBEDIN: Can I just take Mr. Ovalle outside for
2 one moment, Judge?

3 (Whereupon a brief recess was taken.)

4 MR. OBEDIN: Maybe you can explain to me just
5 once on the record what parole's position is, just regarding the
6 timeframe of the first violation, of the September 23rd violation,
7 which is not the subject of today's hearing.

8 PVU CHIEF DEL RIO: It actually is.

9 MR. OBEDIN: The violation that --

10 PVU CHIEF DEL RIO: No. The previous violation
11 didn't cover anything happening in September. The previous parole
12 violation, your client was charged with activities that occurred on or
13 about May.

14 MR. OBEDIN: But wasn't he held from
15 September 23rd?

16 PAROLEE: September 18th.

17 PVU CHIEF DEL RIO: Yeah, the warrant was lodged
18 September 18th.

19 MR. OBEDIN: Right. So that --

20 PVU CHIEF DEL RIO: And he had a preliminary
21 hearing on September 25th. Then you guys filed the writ.

22 MR. OBEDIN: Right.

23 PVU CHIEF DEL RIO: You won the writ.

24 MR. OBEDIN: Right. November 30th.

25 PVU CHIEF DEL RIO: Whenever that was.

1 MR. OBEDIN: Yes.

2 PVU CHIEF DEL RIO: And I wasn't involved in it.

3 MR. OBEDIN: No, I understand.

4 PVU CHIEF DEL RIO: The field operation got wind
5 that there was ongoing visits with the co-defendant that occurred on
6 or about September 23rd --

7 MR. OBEDIN: Right.

8 PVU CHIEF DEL RIO: -- while he was incarcerated
9 in the local jail. As a result of that, the field operations issued the
10 warrant charging him with accepting and being visited by his
11 co-defendant in local custody.

12 MR. OBEDIN: Beginning September 23rd.

13 PVU CHIEF DEL RIO: Yeah. And I understand -- I
14 mean, I'm trying to understand your position, or maybe you can
15 explain your position, but it is my understanding that although an
16 individual is incarcerated on our warrant, while incarcerated on a
17 warrant, if the determination has not been made that he's in actual
18 violation of any charge, the stipulation of any court, then the
19 stipulation made by the Court, and thus sentencing him that he's not a
20 state inmate until that time.

21 If the Court has not imposed a sentence based on any
22 violation, he continues to be a parolee incarcerated; and therefore,
23 subject to the rules and regulations of parole.

24 MR. OBEDIN: Okay. That would be true even if
25 while in custody, the Department is not responsible for the inmates

1 while they're being housed, correct?

2 PVU CHIEF DEL RIO: Yes.

3 MR. OBEDIN: That's parole's position?

4 PVU CHIEF DEL RIO: That's parole's position.

5 MR. OBEDIN: Okay.

6 PVU CHIEF DEL RIO: An example of that is having
7 an individual who's incarcerated on a parole warrant who has not had
8 a final hearing, this decision, who engages in assaultive behavior
9 while in the institution, against either another inmate and/or staff,
10 those charges can be brought against him while he's in local custody.

11 MR. OBEDIN: Correct. Okay.

12 PVU CHIEF DEL RIO: That's while he's continuously
13 on parole even though a warrant is issued on him, because a final
14 disposition has not been made by an administrative law judge.

15 MR. OBEDIN: Okay.

16 ALJ ROSS: Are we ready to proceed?

17 MR. OBEDIN: Yes.

18 ALJ ROSS: Okay.

19 And you're ready to proceed, Mr. Del Rio?

20 PVU CHIEF DEL RIO: Yes, Your Honor.

21 ALJ ROSS: Would you please raise your right hand.

22 Mr. Del Rio?

23 (Whereupon, PVU Chief Del Rio was sworn in by ALJ

24 Ross.)

25 ALJ ROSS: And Mr. Ovalle, in case you testify,

1 would you raise your right hand?

2 (Whereupon, Parolee Ovalle was sworn in by ALJ
3 Ross.)

4 ALJ ROSS: Okay. Are there any issues before we call
5 the first witness?

6 PVU CHIEF DEL RIO: Any what?

7 ALJ ROSS: Issues.

8 PVU CHIEF DEL RIO: Not on my part.

9 ALJ ROSS: Anything else?

10 MR. OBEDIN: No.

11 ALJ ROSS: Okay. As you all know, this is an
12 administrative hearing and the level of proof is a preponderance of the
13 evidence.

14 Do you wish to waive a reading of the rights and enter
15 a plea of not guilty for your client, Mr. Obedin?

16 MR. OBEDIN: Yes, Judge.

17 ALJ ROSS: Okay. And that's Charges 1 through --

18 PVU CHIEF DEL RIO: There's numerous charges,
19 Your Honor. I believe there's a supplementary.

20 ALJ ROSS: There is. It's Charges 1 through 116.

21 MR. OBEDIN: Wait.

22 ALJ ROSS: A plea of not guilty has been entered on
23 those charges.

24 MR. OBEDIN: Where --

25 ALJ ROSS: They were given to your partner last time

1 he was here.

2 MR. OBEDIN: Okay. Your Honor, if I can have a
3 moment. I haven't seen this.

4 ALJ ROSS: Sure. I think they're all more of the same.

5 MR. OBEDIN: All right.

6 Your Honor, Mr. Ovalle is objecting to these
7 supplementary violation charges based on the fact that he wasn't given
8 the opportunity to have a preliminary hearing regarding these
9 additional charges.

10 ALJ ROSS: And that certainly is an issue for a writ.

11 MR. OBEDIN: Okay.

12 ALJ ROSS: Okay. Mr. Del Rio, are you ready to call
13 your first witness?

14 PVU CHIEF DEL RIO: Yes, ma'am.

15 ALJ ROSS: Who is the first witness?

16 PVU CHIEF DEL RIO: Parole Officer Evans.

17 ALJ ROSS: And before you do that, just as protocol,
18 the VOP as well as the Certificate of Release and Notice of Violation
19 are entered into evidence as People's No. 1.

20 (Whereupon a brief recess was taken.)

21 ALJ ROSS: Parole Officer, what's your badge
22 number?

23 PO EVANS: 303.

24 PVU CHIEF DEL RIO: What command is that?

25 PO EVANS: My command is Queens Two.

1 ALJ ROSS: And would you raise your right hand?
2 (Whereupon, Parole Officer Evans was sworn in by
3 ALJ Ross.)
4 ALJ ROSS: Okay. Mr. Del Rio, you may proceed.
5 PVU CHIEF DEL RIO: Yes, Your Honor, thank you.
6 May I have just a moment, Judge?
7 ALJ ROSS: Sure.
8 PVU CHIEF DEL RIO: Thank you, Your Honor.
9 Ms. Evans, by whom are you employed?
10 PO EVANS: New York Department of Corrections
11 and Community Supervision, DOCCS.
12 PVU CHIEF DEL RIO: And do you know one Warren
13 Ovalle?
14 PO EVANS: Yes, I do.
15 PVU CHIEF DEL RIO: And do you see him in the
16 courtroom?
17 PO EVANS: Yes.
18 PVU CHIEF DEL RIO: And can you identify him?
19 PO EVANS: He's the gentleman to your right.
20 ALJ ROSS: Could you identify the piece of clothing?
21 PO EVANS: Yes, a green top.
22 PVU CHIEF DEL RIO: Can the record reflect that
23 PO Evans has identified Mr. Ovalle.
24 How is it that you know him?
25 PO EVANS: I supervised him, he's under my

1 supervision.

2 PVU CHIEF DEL RIO: And let me show you this
3 document. Do you recognize this document?

4 PO EVANS: Yes, I do.

5 PVU CHIEF DEL RIO: Can you identify that
6 document for the Court?

7 PO EVANS: It's the special conditions of release to
8 parole supervision.

9 PVU CHIEF DEL RIO: And whose name, if any, is on
10 that document?

11 PO EVANS: My name appears and so does

12 Mr. Ovalle.

13 PVU CHIEF DEL RIO: And is there any numbers
14 specific to Mr. Ovalle?

15 PO EVANS: Yes, his NYSID number.

16 ALJ ROSS: And what is that?

17 PO EVANS: It is 09347560J.

18 PVU CHIEF DEL RIO: Let the record reflect that
19 PO Evans did identify Mr. Ovalle and the NYSID number that's
20 associated with him.

21 Could you tell the Court what, if any, instructions did
22 you instruct as a result of the special condition?

23 PO EVANS: Do you want me to read it?

24 PVU CHIEF DEL RIO: I want you to tell the Judge
25 and then if we need, you can read it.

1 PO EVANS: It was a special condition for Mr. Ovalle
2 to not have any contact with one Mr. Robert Akre.

3 PVU CHIEF DEL RIO: And who is Mr. Akre?

4 PO EVANS: The co-defendant.

5 PVU CHIEF DEL RIO: And is he the co-defendant for
6 this particular case which Mr. Ovalle is on parole?

7 PO EVANS: Yes.

8 PVU CHIEF DEL RIO: And does your signature
9 appear on this document?

10 PO EVANS: Yes.

11 PVU CHIEF DEL RIO: And where does that signature
12 appear?

13 PO EVANS: On the second page, lower bottom of the
14 second page.

15 PVU CHIEF DEL RIO: And did you witness
16 Mr. Ovalle's signature on that page?

17 PO EVANS: Yes.

18 PVU CHIEF DEL RIO: And did you instruct
19 Mr. Ovalle not to have contact with Mr. Akre?

20 PO EVANS: Yes.

21 PVU CHIEF DEL RIO: And did he understand that?

22 PO EVANS: Yes.

23 PVU CHIEF DEL RIO: How do you know he
24 understood that?

25 PO EVANS: Because I explained the conditions to

1 him, you know, in detail, and he understood that he was a
2 co-defendant and he is not have to have any contact with him, as
3 stated in the conditions of release to parole supervision.

4 PVU CHIEF DEL RIO: Your Honor, I'm going to ask
5 for the document to be entered as State Exhibit 2.

6 ALJ ROSS: Mr. Obedin, you have any objection?

7 MR. OBEDIN: No objection.

8 ALJ ROSS: Okay.

9 MR. OBEDIN: I've seen a copy.

10 PVU CHIEF DEL RIO: No further questions, Your
11 Honor.

12 ALJ ROSS: Okay. Mr. Obedin any questions?

13 MR. OBEDIN: Thank you.

14 Officer Evans, do you know the exact dates that you
15 supervised Mr. Ovalle?

16 PO EVANS: Yes, I do.

17 MR. OBEDIN: Can you tell me what dates?

18 PO EVANS: 11/2/2016 to 3/1/17.

19 MR. OBEDIN: 11/2/16 to 3/1/17?

20 PO EVANS: Yes.

21 MR. OBEDIN: Okay.

22 And I noticed that Government's 2 is entitled "Special
23 Conditions of Release"; is that right?

24 PO EVANS: Yes.

25 MR. OBEDIN: Are there also standard conditions that

1 are given to an individual when they're released to parole supervision?

2 PO EVANS: Yes, he already signed when he reports
3 to me with board mandated conditions. So he comes in, when he
4 reports to me, with conditions.

5 MR. OBEDIN: So he comes to you, he already has
6 general conditions --

7 PO EVANS: Yes.

8 MR. OBEDIN: -- that have been given to him. And
9 then you can choose to impose certain special conditions if you
10 believe it's appropriate; is that correct?

11 PO EVANS: Yes.

12 MR. OBEDIN: Okay. And the special conditions, is it
13 required that you, as the parole officer, that you review them with
14 Mr. Ovalle?

15 PO EVANS: Yes.

16 MR. OBEDIN: And is it required that he sign these
17 conditions in front of you?

18 PO EVANS: Yes. That he understands, yes.

19 MR. OBEDIN: Before signing them, make sure that
20 he understands?

21 PO EVANS: That I explain them, yes.

22 MR. OBEDIN: Okay. And does each parole officer
23 have the right to impose special conditions on an individual who
24 they're supervising?

25 PVU CHIEF DEL RIO: I'm going object, Your Honor,

1 to the phrasing of the question with regards to each parole officer.
2 She can't testify to what each parole officer in the State of New York
3 does or doesn't do.

4 ALJ ROSS: Right. Can you rephrase the question?

5 MR. OBEDIN: Yes. Judge, just to be clear, I'm not
6 asking what any particular other parole officer would do. I'm asking,
7 generally speaking, does a parole officer, any parole officer, do they
8 have the right to impose special conditions on a person they're
9 supervising? Not anyone specifically, but in general, when you're a
10 parole officer and you're supervising individuals, do you have a right
11 to impose special conditions?

12 PO EVANS: Can I answer that?

13 ALJ ROSS: Yes.

14 PO EVANS: Yes.

15 MR. OBEDIN: And you ended your supervision of
16 Mr. Ovalle on March 1st of 2017?

17 PO EVANS: Yes.

18 MR. OBEDIN: Okay. Do you know who the parole
19 officer was who took over supervision on 3/2/17?

20 PO EVANS: Yes.

21 MR. OBEDIN: And who would that have been?

22 PO EVANS: Officer Hamlette.

23 MR. OBEDIN: PO Hamlette. Okay.

24 So is it fair to say that at the time these violations
25 allegedly occurred that you were not Mr. Ovalle's parole officer?

1 PO EVANS: Yes.

2 MR. OBEDIN: You had an opportunity to read the
3 violations?

4 PO EVANS: Yes, I did.

5 MR. OBEDIN: Right. So they began on September
6 23rd of 2017, so at that point you were no longer supervising him?

7 PO EVANS: September 21st of 2017?

8 MR. OBEDIN: 23rd.

9 PO EVANS: Yes, I was no longer his officer.

10 MR. OBEDIN: Do you know -- if you know, was
11 Officer Hamlette Mr. Ovalle's parole officer on September 23rd,
12 2017?

13 PO EVANS: I believe so.

14 MR. OBEDIN: Okay. And when you take over
15 supervision of a parolee, do you always make it -- withdrawn.

16 When you take over supervision of a parolee, whether
17 it's straight out of a state facility or if you take over from another
18 parole officer, do you always review any special conditions with that
19 parolee?

20 PO EVANS: Absolutely.

21 ALJ ROSS: And you always have that parolee sign it
22 after you --

23 PO EVANS: Absolutely.

24 MR. OBEDIN: -- do, so that you --

25 PO EVANS: Absolutely.

1 MR. OBEDIN: -- know he understands.

2 PO EVANS: Absolutely.

3 MR. OBEDIN: Okay. If I can just have one moment,

4 Your Honor.

5 ALJ ROSS: Sure.

6 MR. OBEDIN: Okay. Just one or two more questions,

7 Officer Evans.

8 PO EVANS: Sure.

9 MR. OBEDIN: Other than having Mr. Ovalle review
10 and sign special conditions of parole, are there any other conditions
11 that you reviewed with Mr. Ovalle, other than the standard conditions
12 he came down with from upstate and these special conditions that
13 have been put in as an exhibit, were there any other conditions or
14 anything that you expected of Mr. Ovalle as a parolee to abide by that
15 you reviewed with him and had him sign?

16 PO EVANS: Just the board mandated conditions and
17 my special conditions; however, supervising Mr. Ovalle, he -- any
18 issues that he had or he felt he didn't understand, I always made
19 myself available with Warren. Anything that he had he had my cell
20 phone, he could have called about any concerns because that's the
21 rapport that we had.

22 MR. OBEDIN: Thank you. I'm just asking if there
23 was anything, other than the --

24 PO EVANS: No.

25 MR. OBEDIN: -- standard conditions that he came

1 down with and the exhibit that went in, the special conditions.
2 PO EVANS: Nothing else.
3 MR. OBEDIN: That was it?
4 PO EVANS: Yes.
5 MR. OBEDIN: Okay. Thank you, Officer.
6 PO EVANS: Thank you.
7 PVU CHIEF DEL RIO: No further questions, Your
8 Honor.
9 ALJ ROSS: Thank you, Ms. Evans.
10 PO EVANS: Thank you.
11 ALJ ROSS: Mr. Del Rio, your next witness?
12 (Whereupon a brief recess was taken.)
13 ALJ ROSS: Would you put your name on the record?
14 SPO JUSTE: Senior Parole Officer Gary Juste, Shield
15 363, Suffolk area office.
16 ALJ ROSS: First name Gary?
17 SPO JUSTE: Yes.
18 ALJ ROSS: Would you raise your right hand.
19 (Whereupon, Senior Parole Officer Juste was sworn in
20 by ALJ Ross.)
21 ALJ ROSS: Thank you.
22 You may proceed.
23 PVU CHIEF DEL RIO: SPO Juste, by whom are you
24 employed?
25 SPO JUSTE: DOCCS.

1 PVU CHIEF DEL RIO: In what capacity?

2 SPO JUSTE: Senior Parole Officer.

3 PVU CHIEF DEL RIO: Okay. On or about
4 September of 2017, were you responsible for supervising
5 PO Hamlette?

6 SPO JUSTE: Yes.

7 PVU CHIEF DEL RIO: And during that time period,
8 did you engage in case conference with Ms. -- with Parole Officer
9 Hamlette?

10 SPO JUSTE: Yes.

11 PVU CHIEF DEL RIO: And during that time period,
12 did Parole Officer Hamlette make any request of you regarding
13 Mr. Ovalle's special conditions?

14 SPO JUSTE: No.

15 PVU CHIEF DEL RIO: Did the parole officer, at any
16 time during the conference, seek your permission to modify any
17 special condition related to Mr. Ovalle?

18 SPO JUSTE: No.

19 PVU CHIEF DEL RIO: And do you know where
20 Parole Officer Hamlette is today?

21 SPO JUSTE: She's on medical leave.

22 PVU CHIEF DEL RIO: And could you tell the Court
23 what, if any, efforts you made to get Officer Hamlette here?

24 SPO JUSTE: Yes. We issued a subpoena, I went to
25 her house to serve her the subpoena, I went to her house and I

1 attached it to her door. I've called her several times and I also mailed
2 the subpoena to her house.

3 PVU CHIEF DEL RIO: And you've been unable to
4 communicate with Ms. Hamlette at this point?

5 SPO JUSTE: Yes.

6 PVU CHIEF DEL RIO: And to your knowledge, she's
7 out on extended medical leave and is unavailable?

8 SPO JUSTE: Yes.

9 PVU CHIEF DEL RIO: So as the senior parole officer,
10 during the case conferences you would be made aware if any special
11 conditions were made to modify any conditions as it relates to
12 Mr. Ovalle; is that correct?

13 SPO JUSTE: Yes.

14 PVU CHIEF DEL RIO: And do you recall whether or
15 not any condition was modified, related to Mr. Ovalle's contact with
16 Mr. Robert Akre?

17 SPO JUSTE: No.

18 PVU CHIEF DEL RIO: And what is your knowledge
19 as it related to Mr. Ovalle and Mr. Akre?

20 SPO JUSTE: They are co-defendants.

21 PVU CHIEF DEL RIO: And regarding any contact?

22 SPO JUSTE: That they are not supposed to have any
23 contacts at all.

24 PVU CHIEF DEL RIO: And you have not approved,
25 during your supervision, or given any permission for Mr. Ovalle to

1 have contact with Mr. Akre?

2 SPO JUSTE: No.

3 PVU CHIEF DEL RIO: I have no further questions.

4 ALJ ROSS: Mr. Obedin?

5 MR. OBEDIN: Yes, Your Honor, thank you.

6 Officer Juste, is Officer Hamlette still employed by the

7 Department of Parole?

8 SPO JUSTE: Yes.

9 MR. OBEDIN: Okay. And when did you subpoena

10 Officer Hamlette?

11 SPO JUSTE: It was the Friday, the 23rd, February.

12 MR. OBEDIN: Friday the 23rd of February?

13 SPO JUSTE: Yes.

14 MR. OBEDIN: And did you also indicate that you

15 went by her home?

16 SPO JUSTE: Yes.

17 MR. OBEDIN: Was that to serve the subpoena or was

18 that after the subpoena had been served?

19 SPO JUSTE: To serve the subpoena on her.

20 MR. OBEDIN: And did you successfully serve the

21 subpoena upon her?

22 SPO JUSTE: No. I attached the subpoena to her door

23 because she -- I called, she did not answer my calls, and I attached the

24 subpoena to her door.

25 MR. OBEDIN: And you're her supervising parole

1 officer?

2 SPO JUSTE: Yes.

3 MR. OBEDIN: You're her boss?

4 SPO JUSTE: Yes.

5 MR. OBEDIN: Okay. And it's your testimony here
6 today that one of your employees has been out of contact with you
7 now for a weeks' time even though you attempted to serve a judicial
8 subpoena upon her?

9 SPO JUSTE: She's on medical leave.

10 MR. OBEDIN: That's not what I asked.

11 Is it your testimony that she's been out of touch with
12 you and never responded to the office regarding the subpoena?

13 SPO JUSTE: No.

14 MR. OBEDIN: When Mr. Ovalle met with Officer
15 Hamlette, when Officer Hamlette took over her supervision of
16 Mr. Ovalle, were you present for that meeting?

17 SPO JUSTE: No. I was not in the Suffolk office yet.

18 MR. OBEDIN: Okay. So you have no idea what
19 Officer Hamlette and Mr. Ovalle discussed that day, correct?

20 PVU CHIEF DEL RIO: Excuse me, objection. What
21 date was that?

22 MR. OBEDIN: The day that Officer Hamlette took
23 over parole supervision of Mr. Ovalle.

24 PVU CHIEF DEL RIO: We still don't know what day
25 it is.

1 ALJ ROSS: Okay. I believe it was -- I believe we do
2 know that.

3 PVU CHIEF DEL RIO: I think it was March 2nd of --

4 ALJ ROSS: 2017, Right.

5 MR. OBEDIN: March 2nd, 2017.

6 PVU CHIEF DEL RIO: So that's asked and answered.

7 MR. OBEDIN: Okay. So you have no idea what their
8 discussion was when they met?

9 SPO JUSTE: No.

10 MR. OBEDIN: You have no idea what Officer
11 Hamlette might have indicated to Mr. Ovalle in terms of any special
12 conditions, correct?

13 SPO JUSTE: We've had conferences, she never
14 indicated to me that she modified the special conditions.

15 MR. OBEDIN: Okay. But you weren't there the day
16 that she actually spoke to Mr. Ovalle, the day that she took over,
17 correct?

18 PVU CHIEF DEL RIO: That's asked and answered.

19 MR. OBEDIN: Okay.

20 Do we know if Ms. Hamlette -- Officer Hamlette,
21 excuse me -- reviewed any special conditions with Mr. Ovalle, made
22 sure he understood them, and had him sign any special conditions.
23 Were you aware of any of this?

24 SPO JUSTE: We discussed that she did not make --
25 did not modify the special conditions.

1 MR. OBEDIN: She indicated to you that she did not
2 modify the special conditions?

3 SPO JUSTE: Correct.

4 MR. OBEDIN: Okay. Did she indicate to you
5 whether she reviewed the special conditions already in existence with
6 Mr. Ovalle to make sure that he understood them?

7 SPO JUSTE: Yes, she did.

8 MR. OBEDIN: She indicated that to you?

9 SPO JUSTE: She did review the special conditions
10 with Mr. Ovalle once she started supervising Mr. Ovalle.

11 MR. OBEDIN: You're saying that because she told
12 you that at some subsequent meeting?

13 SPO JUSTE: It's also, I believe, April 12th we had a
14 meeting that she had a meeting and they discussed the special
15 condition, yes.

16 MR. OBEDIN: Wait. So now you're saying that you
17 were at a meeting with Officer Hamlette and Mr. Ovalle --

18 SPO JUSTE: We discussed it. I wasn't in --

19 ALJ ROSS: Let him answer the question.

20 SPO JUSTE: They discussed the special conditions.

21 Usually, when a parolee is transferred to a parole officer, they
22 discuss -- they review the special conditions, even if they don't issue a
23 new one, they review the same special condition and it goes on to the
24 max date.

25 MR. OBEDIN: So if I understand your answer, you

1 weren't there when they met. You're saying that usually an officer
2 will review the special conditions with a parolee. So your testimony
3 is that since that's what usually happens, that's what happened here?

4 SPO JUSTE: We had conference, I have had
5 conference with Officer Hamlette, she never indicated to me that she
6 modified special conditions.

7 MR. OBEDIN: And as you sit here today, you have no
8 contact or control over Officer Hamlette. Is that what you're telling
9 us?

10 SPO JUSTE: I served her, attempted to serve her with
11 the subpoena, we're unable to reach her. I called her several times on
12 the telephone. I went to her house, I mailed her the subpoena and we
13 did not get any answer.

14 MR. OBEDIN: Okay. If I can just have one minute,
15 Judge?

16 ALJ ROSS: Sure.

17 (Whereupon, a brief recess was taken.)

18 MR. OBEDIN: To your knowledge, did Officer
19 Hamlette ever have Mr. Ovalle sign any special conditions of parole?

20 SPO JUSTE: No, I'm not aware of that.

21 MR. OBEDIN: You're not aware of that. Okay.

22 I have no more questions of Officer Juste.

23 ALJ ROSS: Any re-direct?

24 PVU CHIEF DEL RIO: Yes.

25 Officer Juste, this is the parole violation, all right? I'm

1 going to show you this parole violation. Do you recognize the
2 signatures on the last page?

3 SPO JUSTE: Yes, that's Officer Hamlette on the left
4 and this is my signature to the right.

5 PVU CHIEF DEL RIO: And when did you date this?

6 SPO JUSTE: December 7, 2017.

7 PVU CHIEF DEL RIO: And do you recognize these
8 charges?

9 SPO JUSTE: Yes.

10 PVU CHIEF DEL RIO: And who drafted them? Who
11 wrote them out?

12 SPO JUSTE: Officer Hamlette.

13 PVU CHIEF DEL RIO: And she wrote those charges
14 while under your supervision?

15 SPO JUSTE: Yes.

16 PVU CHIEF DEL RIO: And those charges, she's
17 charging Mr. Ovalle with having contact with Mr. Robert Akre?

18 SPO JUSTE: Yes.

19 PVU CHIEF DEL RIO: And did you discuss whether
20 or not she had given permission on those particular dates to have
21 contact with Robert Akre?

22 SPO JUSTE: Yes. She did not.

23 MR. OBEDIN: I'm going to object. That's hearsay.
24 Officer Hamlette is not here, what she answered is hearsay, she should
25 be here.

1 PVU CHIEF DEL RIO: It's not hearsay when she's
2 engaged in case conferences with her senior parole officer and
3 drafting charges and having the senior parole officer issue a warrant
4 based on the charges.

5 MR. OBEDIN: It's always hearsay.

6 ALJ ROSS: And hearsay is allowed at all of these
7 hearings.

8 SPO JUSTE: She never gave her permission.

9 PVU CHIEF DEL RIO: But you had case conferences
10 with her --

11 SPO JUSTE: Correct.

12 PVU CHIEF DEL RIO: -- regarding this particular
13 charges?

14 SPO JUSTE: Correct.

15 PVU CHIEF DEL RIO: And it -- did Officer Hamlette
16 indicate to you that on or before September 23rd, did Ms. Hamlette
17 indicate to you on or about September -- or before September 23rd
18 that he she had given Mr. Ovalle to have permission with Mr. Akre?

19 SPO JUSTE: No.

20 PVU CHIEF DEL RIO: I have no further questions.

21 MR. OBEDIN: I have nothing further.

22 ALJ ROSS: Thank you, Officer Juste.

23 SPO JUSTE: Thank you.

24 (Whereupon, a brief recess was taken.)

25 ALJ ROSS: Good morning. Please state your name

1 for the record.

2 INVESTIGATOR LUGO: Investigator Lugo.

3 ALJ ROSS: Shield number?

4 INVESTIGATOR LUGO: 172.

5 ALJ ROSS: Would you raise your right hand.

6 (Whereupon, Investigator Lugo was sworn in by ALJ

7 Ross.)

8 ALJ ROSS: You may proceed.

9 PVU CHIEF DEL RIO: Officer Lugo, by whom are
10 you employed?

11 INVESTIGATOR LUGO: New York State

12 Department of Community Supervision.

13 PVU CHIEF DEL RIO: In what capacity are you
14 employed?

15 INVESTIGATOR LUGO: Investigator.

16 PVU CHIEF DEL RIO: And on or about -- do you
17 know one Mr. Warren Ovalle?

18 INVESTIGATOR LUGO: I don't know him
19 personally, I know of him.

20 PVU CHIEF DEL RIO: Have you ever seen him
21 before?

22 INVESTIGATOR LUGO: Yes.

23 PVU CHIEF DEL RIO: And do you see him in the
24 courtroom?

25 INVESTIGATOR LUGO: Yes.

1 PVU CHIEF DEL RIO: Can you identify him?

2 INVESTIGATOR LUGO: Right here.

3 PVU CHIEF DEL RIO: And did there come a time
4 when you were conducting an investigation on Mr. Warren Ovalle and
5 Mr. Robert Akre?

6 INVESTIGATOR LUGO: Yes.

7 PVU CHIEF DEL RIO: And do you recall when that
8 was?

9 INVESTIGATOR LUGO: I don't remember the date
10 off the top of my head, but it was last year.

11 PVU CHIEF DEL RIO: Okay. And what was the
12 nature of -- what was your role in that investigation?

13 INVESTIGATOR LUGO: I had to take the
14 photographs at the house.

15 PVU CHIEF DEL RIO: Okay. I'm going to show you
16 this document. Here you go, sir.

17 Do you recognize that?

18 INVESTIGATOR LUGO: Yes.

19 PVU CHIEF DEL RIO: Did you take that photograph?

20 INVESTIGATOR LUGO: Yes, I did.

21 PVU CHIEF DEL RIO: And where were you when
22 you took that photograph?

23 INVESTIGATOR LUGO: Inside of 15 East Locust
24 Street, Central Islip.

25 PVU CHIEF DEL RIO: And do you recall when you

1 took that photograph?

2 INVESTIGATOR LUGO: Approximately, 6:57 AM

3 on September 18th.

4 PVU CHIEF DEL RIO: And what is that a photo of?

5 INVESTIGATOR LUGO: That is a photo of a New

6 York State Driver's License for one Robert Akre.

7 PVU CHIEF DEL RIO: And what is that license

8 number?

9 INVESTIGATOR LUGO: 909-736-213.

10 PVU CHIEF DEL RIO: And do you know anyone else

11 who lives at 15 -- what is that -- Locust Street, Central Islip?

12 INVESTIGATOR LUGO: Yes, that would be

13 Mr. Warren Ovalle.

14 PVU CHIEF DEL RIO: And you took this

15 photograph?

16 INVESTIGATOR LUGO: Yes.

17 PVU CHIEF DEL RIO: And you took this photograph

18 in the normal course of business as an investigator for the New York

19 State Department of Correction Community Supervision?

20 INVESTIGATOR LUGO: Yes.

21 PVU CHIEF DEL RIO: And was it your responsibility

22 to take those photographs on this day?

23 INVESTIGATOR LUGO: Yes.

24 PVU CHIEF DEL RIO: And did you keep these

25 photographs in the normal course of business and did you store them

1 in the normal course of business by New York State Department of
2 Corrections?

3 INVESTIGATOR LUGO: Yes.

4 PVU CHIEF DEL RIO: Your Honor, I ask that the
5 photo be taken into evidence.

6 MR. OBEDIN: I'll object as to relevance to the
7 violations being charged.

8 ALJ ROSS: Right. Could you explain?

9 PVU CHIEF DEL RIO: Your Honor, it's our
10 contention that this ID and the ID number was utilized to enter the
11 correctional facility while visiting Mr. Ovalle during the time period
12 in question.

13 ALJ ROSS: Okay. For that purpose, I'll allow it.

14 PVU CHIEF DEL RIO: I have no further questions.

15 ALJ ROSS: This becomes People's 3.

16 MR. OBEDIN: I have no questions.

17 Oh, I'm sorry. One moment, please.

18 I have no questions.

19 ALJ ROSS: Thank you.

20 PVU CHIEF DEL RIO: Your Honor, at this time,
21 we're requesting permission to bring a laptop in so we can view a
22 DVD, unless you want to stipulate to the video.

23 MR. OBEDIN: No.

24 PVU CHIEF DEL RIO: It's a video that we'd like to
25 show the Court of the visiting area at the county jail.

1 ALJ ROSS: And we're waiting for the corrections
2 officer to make a decision?
3 PVU CHIEF DEL RIO: They have it in custody.
4 ALJ ROSS: Okay.
5 PVU CHIEF DEL RIO: They have to -- when you
6 bring the video or something in they keep it in a locker, they don't let
7 you walk in with electronics, so it has to be escorted. It would have
8 been convenient to have it here, but it's the way they do it.
9 (Whereupon a discussion was held off the record.)
10 ALJ ROSS: Could you please state your name for the
11 record?
12 LT. SCHNEIDER: My name is Lieutenant Karl
13 Schneider, L102, Karl with a K.
14 ALJ ROSS: Thank you. And your shield number
15 again?
16 LT. SCHNEIDER: L102, L as in Larry, 102.
17 PVU CHIEF DEL RIO: Lieutenant Schneider, by
18 whom are you employed?
19 ALJ ROSS: Hold on. I need you to raise your right
20 hand.
21 PVU CHIEF DEL RIO: Sorry.
22 (Whereupon, Lieutenant Schneider was sworn in by
23 ALJ Ross.)
24 ALJ ROSS: Okay. You may proceed.
25 PVU CHIEF DEL RIO: Officer Schneider, by whom

1 are you employed?

2 LT. SCHNEIDER: Suffolk County Sheriff's Office.

3 PVU CHIEF DEL RIO: In what capacity?

4 LT. SCHNEIDER: I'm the Commanding Officer of the
5 record room.

6 PVU CHIEF DEL RIO: And when you say the
7 commanding officer for the record room, what exactly does that
8 entail?

9 LT. SCHNEIDER: All the goings on in the record
10 room. The record room is responsible for all inmate court records,
11 when they are discharged, their disciplinary records, court
12 appointments, writs, in and out of the facility and so on. Most of the
13 legal work to an inmate.

14 PVU CHIEF DEL RIO: And did you receive a
15 subpoena regarding the case of Mr. Warren Ovalle?

16 LT. SCHNEIDER: Yes, I did.

17 PVU CHIEF DEL RIO: And as a result of the
18 subpoena, what, if anything, did you do?

19 LT. SCHNEIDER: Whatever the subpoena required.
20 We often get subpoenaed by agencies, usually it's from the office of
21 the District Attorney, parole, probation, whatever the subpoena
22 requests, whatever information, my office will gather the information.
23 I will take it, certify it, check it for accuracy, look over all the
24 documents. We then turn it over to the department that is requesting
25 information.

1 PVU CHIEF DEL RIO: Let me show you this
2 document. You recognize that document?

3 LT. SCHNEIDER: Yes, sir.

4 PVU CHIEF DEL RIO: Who, if anyone's name, is on
5 that document?

6 LT. SCHNEIDER: Well, it's my certification and my
7 signature.

8 PVU CHIEF DEL RIO: And what is your -- can you
9 describe that to the Court?

10 LT. SCHNEIDER: Okay. Once the subpoena is
11 issued to our office, obviously it requests certain materials, visitor
12 logs, phone calls, phone records, possibly videos, on occasion. If we
13 have access to that, my office has access to it, my staff will gather all
14 the information that the subpoena requests. Once it's all gathered,
15 they turn it over to my office, and at that time I check it to make sure
16 that everything is asked for in the subpoena is in the packet that's been
17 provided for me. If it's all provided, I check it for -- make sure it's
18 authentic, make sure it's the actual documents from the sheriff's
19 department. I make sure that any discs or CDs have actual material
20 on them. And at that point we turn them over to the requesting
21 agency when they present us with an original subpoena.

22 PVU CHIEF DEL RIO: And in this particular case,
23 what, if any, documents did you turn over to the Department of
24 Corrections and Community Supervision?

25 LT. SCHNEIDER: Okay. The -- as stated here, the

1 visiting records, that we turned over, we probably turned over the --
2 when an inmate is visited by a civilian, that civilian's name is entered
3 into the computer, the time, whatnot, and scanned into the computer.
4 And then it's -- I would present that as a visiting log. And every
5 inmate would have a visitor history in the computer. I will basically
6 just bring their visitor history up, if that's what asked for, for whatever
7 dates are asked for. And I will present -- I just will just that print out
8 in my office, or someone on my staff will do that. The other records
9 here, apparently, this is the -- there were no recordings.

10 PVU CHIEF DEL RIO: But in this particular case,
11 based on your certification, these were for visiting records regarding
12 which civilian witness?

13 LT. SCHNEIDER: If I'm pronouncing the name right,
14 Robert Akre.

15 PVU CHIEF DEL RIO: And who was the inmate
16 being visited?

17 LT. SCHNEIDER: Mr. Warren Ovalle.

18 PVU CHIEF DEL RIO: And you're certifying that
19 these records that I have in my possession --

20 LT. SCHNEIDER: Right.

21 PVU CHIEF DEL RIO: -- and you have --

22 LT. SCHNEIDER: I do.

23 PVU CHIEF DEL RIO: -- are accurate and true?

24 LT. SCHNEIDER: Yes, sir. These are the ones -- all
25 these documents come directly from a department computer. These

1 would have been made by an officer at the visiting unit.

2 PVU CHIEF DEL RIO: And I like to draw your

3 attention to page: -- your page 3, my page 2, your page 2.

4 MR. OBEDIN: My page?

5 PVU CHIEF DEL RIO: Two.

6 That's a February 6th visit; is that correct?

7 LT. SCHNEIDER: That's correct.

8 PVU CHIEF DEL RIO: And who --

9 ALJ ROSS: What year is that?

10 PVU CHIEF DEL RIO: I'm sorry?

11 ALJ RISS: What year is that?

12 PVU CHIEF DEL RIO: 2018.

13 ALJ ROSS: Thank you.

14 PVU CHIEF DEL RIO: You want to look on?

15 ALJ ROSS: No, that's okay.

16 MR. OBEDIN: Is that this page?

17 PVU CHIEF DEL RIO: Yeah, February 6th.

18 MR. OBEDIN: Got it.

19 LT. SCHNEIDER: 9:43 34 seconds?

20 PVU CHIEF DEL RIO: And who is the inmate being

21 visited?

22 LT. SCHNEIDER: Warren Ovalle.

23 PVU CHIEF DEL RIO: And can you tell the Court the

24 civilian visiting?

25 LT. SCHNEIDER: Robert Akre.

1 PVU CHIEF DEL RIO: And is there any identification
2 that's utilized or inputted into the computer that represents any form
3 of ID given by the defendant -- the visitor?

4 LT. SCHNEIDER: Yes. This ID number on the
5 left-hand side, that's a New York State driver's license number, that
6 909-736-203 is his driver's license number. That license is also
7 scanned in the computer when a -- when the visitor comes to the
8 facility.

9 PVU CHIEF DEL RIO: And I want to show you this
10 document. We're back to the picture of the license.

11 MR. OBEDIN: Okay.

12 PVU CHIEF DEL RIO: You didn't take that picture,
13 right, sir?

14 LT. SCHNEIDER: No.

15 PVU CHIEF DEL RIO: You've never seen that picture
16 before?

17 LT. SCHNEIDER: No.

18 PVU CHIEF DEL RIO: Could you inform the Court
19 could you identify the number on the license?

20 LT. SCHNEIDER: 909-736-213.

21 PVU CHIEF DEL RIO: Would you say that that
22 matches the same identification number that's on your record?

23 LT. SCHNEIDER: Yes, sir.

24 PVU CHIEF DEL RIO: And who, if anyone's, name is
25 that on that license?

1 LT. SCHNEIDER: Robert Akre.

2 PVU CHIEF DEL RIO: And the address?

3 LT. SCHNEIDER: 15 East Locust Street, Central
4 Islip, New York.

5 PVU CHIEF DEL RIO: Okay. Thank you very much.

6 Now, have you had an opportunity to look through the
7 document? Can you look through it, because I don't want to look
8 through every single document. I mean, we can do that, but for
9 expedience purposes, can you tell the Court when these records began
10 and when they end?

11 LT. SCHNEIDER: My first document here is on
12 February 6, 2018. Do you want every date or just the last page?
13 That's all also February 6th. So they each --

14 PVU CHIEF DEL RIO: They all seem to be
15 February 6th.

16 LT. SCHNEIDER: Oh, that's when the report was
17 generated. I'm sorry.

18 PVU CHIEF DEL RIO: Okay.

19 LT. SCHNEIDER: That's when we ran the report.

20 PVU CHIEF DEL RIO: Can you tell me when the --
21 so you generated this on February 6, 2018?

22 LT. SCHNEIDER: Correct. That's when it was asked
23 for.

24 PVU CHIEF DEL RIO: Can you tell the Court when
25 the visits were?

1 LT. SCHNEIDER: This is on my page 3, I think your
2 page 2, is December 15, 2017.

3 PVU CHIEF DEL RIO: And the second page?

4 LT. SCHNEIDER: December 22, 2017.

5 PVU CHIEF DEL RIO: And the page after that?

6 LT. SCHNEIDER: December 27, 2017.

7 PVU CHIEF DEL RIO: And after that?

8 LT. SCHNEIDER: December 29, 2017.

9 PVU CHIEF DEL RIO: Continue.

10 LT. SCHNEIDER: January 3rd, 2018, January 6th,
11 2018, January 12th, 2018. This is a different visitor -- but it's also
12 the -- I'm sorry, yeah, January 18th, 2018, January 19th, 2018,
13 January 23rd, 2018, January 27th, 2018, and January 30th, 2018.

14 PVU CHIEF DEL RIO: And in looking at these
15 documents as we have, would you attest to the accuracy and
16 truthfulness of the documents?

17 LT. SCHNEIDER: Yes, they are definitely truthful.

18 PVU CHIEF DEL RIO: And were these documents
19 prepared in the normal course of business by the Suffolk County
20 Sheriff's Department?

21 LT. SCHNEIDER: Yes, they are.

22 PVU CHIEF DEL RIO: And is it your responsibility to
23 maintain these records?

24 LT. SCHNEIDER: My office will certify that these are
25 accurate. These particular records here are entered into the computer

1 in the visiting units, whether it be Yaphank or Riverhead. We have no
2 reason for these in my office, per se, but I can gain access to these
3 through my computer in the record room and only Sheriff's personnel
4 would have access.

5 PVU CHIEF DEL RIO: But would you attest that
6 these are records kept in the normal course of business --

7 LT. SCHNEIDER: They are definitely records --

8 PVU CHIEF DEL RIO: -- by the Suffolk County
9 Sheriff's Department?

10 LT. SCHNEIDER: Yes, they are.

11 PVU CHIEF DEL RIO: And are they true and
12 accurate to the best of your knowledge?

13 LT. SCHNEIDER: Yes, sir.

14 PVU CHIEF DEL RIO: And it's the responsibility of
15 the Sheriff's Department to maintain these records, is that correct?

16 LT. SCHNEIDER: Yes.

17 PVU CHIEF DEL RIO: And you also indicated that
18 you keep videos as well?

19 LT. SCHNEIDER: Once again, our department will
20 keep those --

21 PVU CHIEF DEL RIO: But you're able to gather them
22 as a result of the subpoena?

23 LT. SCHNEIDER: If necessary, yes we can.

24 PVU CHIEF DEL RIO: You gathered --

25 LT. SCHNEIDER: Yes.

1 PVU CHIEF DEL RIO: You were requested and you
2 did gather some video?

3 LT. SCHNEIDER: That's correct.

4 PVU CHIEF DEL RIO: I'm going to stop questioning
5 him on this so you can voir dire on this, and then we can do the video
6 separately.

7 MR. OBEDIN: I have no voir dire on this.

8 PVU CHIEF DEL RIO: Okay. So I will request that
9 this be entered into evidence.

10 ALJ ROSS: Okay. This becomes People's 4.

11 Thank you.

12 PVU CHIEF DEL RIO: Do you recognize that?

13 LT. SCHNEIDER: Yes, sir.

14 PVU CHIEF DEL RIO: And what do you recognize
15 that to be?

16 LT. SCHNEIDER: This is a video that was requested
17 through a subpoena that we provided, once again, by whatever agency
18 is requesting it.

19 PVU CHIEF DEL RIO: Did you provide that video?

20 LT. SCHNEIDER: I provided it to the agency. I didn't
21 burn the DVD.

22 PVU CHIEF DEL RIO: I know you didn't.

23 LT. SCHNEIDER: Our IT guy comes to our office and
24 burns this and I check it for accuracy to make sure it's exactly what's
25 been asked for.

1 PVU CHIEF DEL RIO: He burns it by your request?

2 LT. SCHNEIDER: Yes.

3 PVU CHIEF DEL RIO: You made the request for
4 them to burn this particular DVD?

5 LT. SCHNEIDER: Yes.

6 PVU CHIEF DEL RIO: And these particular dates
7 were burned as a result of your request?

8 LT. SCHNEIDER: That's correct.

9 PVU CHIEF DEL RIO: And you made the request
10 based on the subpoena?

11 LT. SCHNEIDER: That's correct.

12 PVU CHIEF DEL RIO: And after it's burned, it's then
13 given to you?

14 LT. SCHNEIDER: That's correct.

15 PVU CHIEF DEL RIO: And then you view it?

16 LT. SCHNEIDER: That's correct.

17 PVU CHIEF DEL RIO: And view it for accuracy?

18 LT. SCHNEIDER: Yes. I just make sure that, once
19 again, that it's subpoena specific dates, times, what they want. I make
20 sure that it's what's provided, for accuracy.

21 PVU CHIEF DEL RIO: And you recognize that be to
22 be one of the DVDs that were requested?

23 LT. SCHNEIDER: That's correct, I do.

24 PVU CHIEF DEL RIO: And you -- at some point that
25 was given to you?

1 LT. SCHNEIDER: That's correct.
2 PVU CHIEF DEL RIO: And you certify that it's true
3 and accurate?
4 LT. SCHNEIDER: Yes. I looked at it myself,
5 personally.
6 PVU CHIEF DEL RIO: We'll have an opportunity to
7 look at it.
8 MR. OBEDIN: Can I just have a look at the disc?
9 Now, Lieutenant, there are some names written on
10 here, Warden, Frankie, and a corrections officer Pashkey?
11 LT. SCHNEIDER: Frankie, Warden, Pashkey, that's
12 correct.
13 MR. OBEDIN: Your name is nowhere on this; is that
14 correct?
15 LT. SCHNEIDER: That's correct.
16 MR. OBEDIN: And your initials are nowhere?
17 LT. SCHNEIDER: That's correct.
18 MR. OBEDIN: Okay. All right. I have no objection
19 to this.
20 Are you going to be playing that? I want to come
21 around.
22 PVU CHIEF DEL RIO: Yes, we are. It's just going to
23 take a moment to key it up. As soon as it comes up I'll let you know.
24 ALJ ROSS: Will you be putting that into evidence?
25 PVU CHIEF DEL RIO: Yes, after we view it. Right

1 now, I would ask that it be marked for identification.

2 ALJ ROSS: Okay. That would be People's 5 for
3 identification.

4 PVU CHIEF DEL RIO: Do you know what we're
5 looking at?

6 LT. SCHNEIDER: Yes.

7 PVU CHIEF DEL RIO: How do we know what date is
8 here?

9 It's up if you want to come over, well, not up yet. It's
10 not actually up. I'm not sure what I'm looking at.

11 PAROLEE: Are we on the record?

12 COURT REPORTER: Yes.

13 PVU CHIEF DEL RIO: What if I click on this?

14 LT. SCHNEIDER: If you click the screen --

15 PV CHIEF DEL RIO: All right. All right.

16 ALJ ROSS: For the record, now, would you please
17 identify what you're looking at?

18 MR. OBEDIN: We're not looking at anything right
19 now.

20 LT. SCHNEIDER: That was the visiting room of the
21 Yaphank correctional facility.

22 PVU CHIEF DEL RIO: I really don't know what
23 happened. I pressed the wrong button.

24 What is this?

25 LT. SCHNEIDER: You closed it. So if you hit "Start"

1 and go back to My Computer, you should be able to access is again.

2 PVU CHIEF DEL RIO: This right here?

3 LT. SCHNEIDER: Yes.

4 PVU CHIEF DEL RIO: Okay. You know more than
5 me then.

6 Okay. Here we go now. I'm not touching it again. Is
7 that the area we want to look at?

8 LT. SCHNEIDER: That's the visiting room.

9 Depending on where the visit was, I'm not sure.

10 PVU CHIEF DEL RIO: Okay. Is there any way of
11 making them all play at the same time?

12 LT. SCHNEIDER: You -- that would take a more
13 computer literate person than myself. I'm not sure.

14 PVU CHIEF DEL RIO: Okay. I'm okay with what I
15 know. Look at that it's actually going -- they're working. They're
16 actually moving, right? Would you agree?

17 LT. SCHNEIDER: Yes.

18 ALJ ROSS: Mr. Ovalle, can you see this?

19 PAROLEE: I can see.

20 MR. OBEDIN: Can you stop it for one second,
21 please? Can you pause it?

22 PVU CHIEF DEL RIO: Okay, here we go. I didn't see
23 that. I paused them all.

24 MR. OBEDIN: I'm going to object to this because
25 what Lieutenant has testified to so far and what was given to the Court

1 and what was already put into evidence was a subpoena covering
2 dates at end of December into January of 2018. This is time stamped
3 October 10th of 2017. We haven't heard anything regarding anything
4 from October 10th of 2017.

5 PVU CHIEF DEL RIO: He's received a subpoena
6 covering the whole entire -- he's indicated he received --

7 MR. OBÉDIN: We haven't seen that.

8 ALJ ROSS: Well, let's see what the subpoena that's in
9 evidence is for.

10 PVU CHIEF DEL RIO: I didn't put a subpoena into
11 evidence.

12 ALJ ROSS: The certification was for visits from
13 12/15/17 to 1/30/18.

14 So objection sustained.

15 LT. SCHNEIDER: Isn't there a second subpoena that
16 you should have?

17 PVU CHIEF DEL RIO: Let me see what I have here.

18 LT. SCHNEIDER: I believe I received two for

19 Mr. Ovalle.

20 PVU CHIEF DEL RIO: Hold on. Maybe it's in here.
21 Here it goes.

22 You recognize that letter?

23 LT. SCHNEIDER: Yes. This is another certification
24 letter I signed on December 7, 2017.

25 PVU CHIEF DEL RIO: And what period of time did

1 that cover?

2 LT. SCHNEIDER: Excuse me?

3 PVU CHIEF DEL RIO: What is the period of time did
4 that certification cover?

5 LT. SCHNEIDER: September 18th, 2017, to
6 December 5th, 2017.

7 PVU CHIEF DEL RIO: And did you prepare that
8 document?

9 LT. SCHNEIDER: This here? Yes, I did.

10 PVU CHIEF DEL RIO: Did you prepare that
11 document in the normal course of business as an employee of the
12 County Sheriff's Department of Suffolk County?

13 LT. SCHNEIDER: Yes, I did.

14 PVU CHIEF DEL RIO: And does your name appear
15 on that document?

16 LT. SCHNEIDER: Yes, sir.

17 PVU CHIEF DEL RIO: And what caused you to
18 prepare that?

19 LT. SCHNEIDER: I received a subpoena requesting
20 the information that's on the certification.

21 PVU CHIEF DEL RIO: That's the only copy I have.

22 MR. OBEDIN: Okay.

23 PVU CHIEF DEL RIO: I don't know if you recall the
24 subpoena, it's been a while.

25 LT. SCHNEIDER: I receive 20 a week so I'd have to

1 review what you have.

2 PVU CHIEF DEL RIO: Was is as a result of receiving
3 a subpoena that you prepared that certification?

4 LT. SCHNEIDER: That is correct, yes.

5 PVU CHIEF DEL RIO: I'm going to ask the Court to
6 take at least the certification into evidence. I don't think the subpoena
7 is necessary.

8 MR. OBEDIN: I'm sorry, what's --

9 ALJ ROSS: He's placing the subpoena into evidence.

10 MR. OBEDIN: Okay.

11 ALJ ROSS: You have no objection?

12 MR. OBEDIN: No.

13 ALJ ROSS: Okay.

14 PVU CHIEF DEL RIO: And as a result --

15 MR. OBEDIN: That's the earlier subpoena that we
16 were just --

17 LT. SCHNEIDER: Yes.

18 MR. OBEDIN: Okay.

19 PVU CHIEF DEL RIO: I always have a problem
20 reading these things.

21 I'm going to show you this document. Do you
22 recognize that document?

23 LT. SCHNEIDER: Yes. It's an inmate visitor history
24 for Mr. Ovalle.

25 PVU CHIEF DEL RIO: And does anyone else's

1 name -- who were the visitors?

2 LT. SCHNEIDER: Everyone and dates, or?

3 PVU CHIEF DEL RIO: Just --

4 LT. SCHNEIDER: Starting with 12/21, Sylvie Ovalle,
5 that same day was Robert Akre.

6 PVU CHIEF DEL RIO: How about in September?

7 LT. SCHNEIDER: September 29th, 2017, Robert
8 Akre; September 29th, 2017, Sylvie Ovalle.

9 PVU CHIEF DEL RIO: Can we concentrate just on
10 Robert Akre?

11 LT. SCHNEIDER: 10/10/2017, Robert Akre. I'm
12 sorry, so yeah, October 13, 2017, Robert Akre; October 20, 2017,
13 Robert Akre; October 25, 2017, Robert Akre.

14 Continue?

15 PVU CHIEF DEL RIO: I think the Court can read the
16 rest.

17 MR. OBEDIN: If I may, Lieutenant, when this list
18 indicates on the same date --

19 LT. SCHNEIDER: That's correct.

20 MR. OBEDIN: -- Robert Akre and Sylvie Ovalle, for
21 instance, on 9/29/17.

22 LT. SCHNEIDER: Right.

23 MR. OBEDIN: Would that visit be taking place at the
24 same time or would that be multiple visits?

25 LT. SCHNEIDER: It could be the same time it could

1 be at different times. I can --

2 MR. OBEDIN: How we would we know that?

3 LT. SCHNEIDER: These records we looked at a short
4 while ago, the other subpoena. The time that person comes in --

5 MR. OBEDIN: Yes.

6 LT. SCHNEIDER: -- is on that. When they come in
7 they get their ID scanned. When I look Mr. Akre's identification -- if
8 you could show it to me, I could tell you the time and then I'll explain.
9 When I looked at the visitor logs, those individual logs.

10 PVU CHIEF DEL RIO: I have written ones that don't
11 reflect the other ones. Could you identify these?

12 LT. SCHNEIDER: Yeah, there's a -- if you look at the
13 other subpoenas -- the other records, I can show you.

14 PVU CHIEF DEL RIO: The Judge -- yeah, I have a
15 copy of that. This one here.

16 LT. SCHNEIDER: For instance, when Mr. Akre came
17 to visit Mr. Ovalle, they scanned in his driver's license -- Mr. Akre,
18 they scanned his driver's license in.

19 MR. OBEDIN: Right.

20 LT. SCHNEIDER: It was then put into in the
21 computer at 14:17. If we have the records that were subpoenaed for
22 this Ms. Sylvia Ovalle's visitor logs, you would also have an identical
23 minute there, within a minute or two of each other, probably they
24 came together for a visit.

25 MR. OBEDIN: Okay. So Lieutenant, what you're

1 reading from the is the second subpoena which deals with visits
2 beginning late December of '17 into early January of '18, correct?

3 LT. SCHNEIDER: Right.

4 MR. OBEDIN: What we're looking at here, in terms of
5 an inmate visitor history, is from September 29th of 2017 through
6 December 1st of 2017. So this history pre-dates the information you
7 have here?

8 LT. SCHNEIDER: That's correct. So for instance,
9 looking at what I have here, this form here --

10 MR. OBEDIN: Right.

11 LT. SCHNEIDER: -- there's no way of me knowing if
12 these two people came in at the exact same time. I could find out, we
13 have records for that, but just by looking at that this, no, I can't.

14 MR. OBEDIN: If it was a visit involving both of them
15 at the same time with Mr. Ovalle or whether they were separate visits;
16 is that right?

17 LT. SCHNEIDER: That's correct. I would have to
18 have other documents that my office would be able to provide.

19 MR. OBEDIN: Okay. And is it fair to say that in
20 every instance on this inmate visitor history between 9/29 of 2017 and
21 December 1st of 2017, every time a visit is indicated for Mr. Robert
22 Akre, there is a visit from Sylvie Ovalle at the same -- on the same
23 date?

24 LT. SCHNEIDER: On the same date.

25 Highly unlikely that every one of those would be a

1 different time, highly unlikely.

2 MR. OBEDIN: That they would be a different time?

3 LT. SCHNEIDER: Yeah.

4 MR. OBEDIN: Meaning that --

5 LT. SCHNEIDER: It would be the same session.

6 MR. OBEDIN: That Mr. Ovalle would be meeting
7 with them at the same time?

8 LT. SCHNEIDER: It would be highly probable they
9 were at the same session. There's no way of me knowing that without
10 further documenting -- seeing further documents on my computer. It
11 would be highly unlikely that they would have the same -- they would
12 have different visits, per se, so close. Put it this way, an inmate is
13 allowed, without looking at these dates, an inmate gets two visits a
14 week.

15 MR. OBEDIN: Right.

16 LT. SCHNEIDER: That's his two right there.

17 MR. OBEDIN: Right.

18 LT. SCHNEIDER: Okay? That would be it. They
19 wouldn't be able to come another time if they're not together. So if
20 during the same week, they're both there at the same date again, it's
21 only one visit they came at the same time.

22 MR. OBEDIN: Okay. So you can tell, based upon the
23 number of visits on here, that this was a visit with both Mr. Akre and
24 Mr. Ovalle's mother at the same time with Mr. Ovalle in all of these
25 instances.

1 LT. SCHNEIDER: It would be highly probable that
2 they came together.

3 MR. OBEDIN: Okay. Thank you.

4 LT. SCHNEIDER: They could split the session also,
5 so I don't know if they're sitting next to each other. Sylvie and Robert
6 can take half the visit, they could be sitting there next to each other.
7 There's no way of me knowing from that.

8 MR. OBEDIN: And just, how long -- is every visit the
9 same amount of time?

10 LT. SCHNEIDER: No. A lot of them are cut short for
11 various reasons. Sometimes a visitor will come in and say, "I only
12 have five minutes, I'm going to get out of here." Another person, it
13 would be a light visiting day, the officers, if they choose to, they can
14 let the inmates sit there longer.

15 MR. OBEDIN: Oh, they can. It's flexible?

16 LT. SCHNEIDER: Yeah, if there's nothing going on,
17 everything's quiet, everyone's obeying the rules.

18 MR. OBEDIN: Okay. So it's flexible, but you can't
19 tell, again, from the inmate visitor history list how long the visits
20 were?

21 LT. SCHNEIDER: Just by this? No, I can't.

22 MR. OBEDIN: Okay. Would you be able to tell by
23 this?

24 LT. SCHNEIDER: No.

25 MR. OBEDIN: Or does this only show the time in?

1 LT. SCHNEIDER: This is the time in. Then you'd
2 have to go -- there are other records.

3 MR. OBEDIN: Can you find out?

4 LT. SCHNEIDER: I mean, you can find out. It would
5 be a lot of homework. And I don't know if visiting is keeping the
6 records longer period of time, then a week, say, or two weeks.

7 PVU CHIEF DEL RIO: But the records do indicate, to
8 your knowledge, that visits took place between Mr. Ovalle and
9 Mr. Akre on these particular days?

10 LT. SCHNEIDER: There's no doubt in my mind that
11 they did have visits.

12 PVU CHIEF DEL RIO: And whether they were
13 together with his mother or not together, it does show that Mr. Akre
14 did visit Mr. Ovalle on those particular dates?

15 LT. SCHNEIDER: He definitely visited on those
16 dates, no doubt about it.

17 PVU CHIEF DEL RIO: I would ask that the Court
18 take the document -- I don't have a copy. You want a copy?

19 MR. OBEDIN: Yeah, we can do that after the fact.

20 PVU CHIEF DEL RIO: Okay. I would ask the Court,
21 we enter something for identification?

22 ALJ ROSS: For identification?

23 PVU CHIEF DEL RIO: One was for identification.

24 ALJ ROSS: Yeah, that was for the other certification.

25 PVU CHIEF DEL RIO: All right. I'd like to enter -- is

1 this the Court's? No, it's not.

2 ALJ ROSS: Okay. This is the one that goes back to

3 October.

4 PVU CHIEF DEL RIO: That copy is September to

5 October.

6 ALJ ROSS: Those are the dates?

7 PVU CHIEF DEL RIO: Yeah, and then we'll go back

8 to the video.

9 ALJ ROSS: Okay.

10 MR. OBEDIN: Can I see that for one second? Thank

11 you.

12 LT. SCHNEIDER: Just hit the arrow for it to start.

13 PVU CHIEF DEL RIO: Is there any way, to get it to

14 October 10th?

15 LT. SCHNEIDER: I would imagine.

16 PVU CHIEF DEL RIO: So how do we do that?

17 LT. SCHNEIDER: So you need 1400 hours, so you

18 need to fast-forward 30 minutes.

19 PVU CHIEF DEL RIO: Okay. So we need to --

20 LT. SCHNEIDER: So you need to go to the next

21 frame. I don't know what the intervals are on this computer.

22 PVU CHIEF DEL RIO: Well, can we do this?

23 LT. SCHNEIDER: You can try --

24 ALJ ROSS: And --

25 MR. OBEDIN: I'm sorry.

1 ALJ ROSS: Can you identify for the stenographer?

2 PVU CHIEF DEL RIO: Yeah. I'll do that now.

3 Lieutenant, can you identify what we're looking at?

4 LT. SCHNEIDER: Yes. There are four frames on this

5 screen, three of them have a picture of the visiting area where both

6 inmates and their visitors will meet for the visit.

7 PVU CHIEF DEL RIO: And this is the visiting area

8 for where?

9 LT. SCHNEIDER: Excuse me? The visiting area for
10 the Yaphank visiting facility.

11 PVU CHIEF DEL RIO: Okay. And that's this facility?

12 LT. SCHNEIDER: Correct. And the fourth frame is
13 just the reception area for the Yaphank facility.

14 PVU CHIEF DEL RIO: And you're familiar with this
15 facility?

16 LT. SCHNEIDER: Yes, sir.

17 PVU CHIEF DEL RIO: And how are you familiar
18 with it?

19 LT. SCHNEIDER: I've worked on and off in this
20 facility hundreds of time for overtime, for --

21 PVU CHIEF DEL RIO: How long have you been
22 employed -- strike that.

23 You've been in this particular location numerous
24 times?

25 LT. SCHNEIDER: I've been in this location as a

1 Sargent and as a Lieutenant.

2 PVU CHIEF DEL RIO: And you recognize this

3 facility?

4 LT. SCHNEIDER: No doubt about it, yes.

5 PVU CHIEF DEL RIO: And you recognize it to be

6 what location?

7 LT. SCHNEIDER: The visiting area of the Yaphank

8 facility.

9 PVU CHIEF DEL RIO: Okay. Can we play it now?

10 MR. OBEDIN: Sure. Did we get a cue to a particular

11 time?

12 LT. SCHNEIDER: It's at 14:00, if you -- where's the

13 arrows?

14 PVU CHIEF DEL RIO: It disappeared. I think it's

15 going to key up.

16 MR. OBEDIN: What time are we at? We're up to 2

17 o'clock and 25 seconds right now and moving.

18 PVU CHIEF DEL RIO: It looks like it's moving.

19 MR. OBEDIN: And what time are we looking for?

20 LT. SCHNEIDER: You're going to -- you'll be

21 watching this for 30 minutes if you're going the way are you now.

22 PVU CHIEF DEL RIO: So what do I do?

23 LT. SCHNEIDER: So try hitting that half if you could,

24 yeah. Now, if you could hit this little guy right over there, yeah, you

25 should be able to go forward. Try going down. It's not going? Try

1 hitting the half then, maybe.
2 PVU CHIEF DEL RIO: I did that. I think this is the
3 speed.
4 LT. SCHNEIDER: It should be forwarding right now.
5 PVU CHIEF DEL RIO: Now we're at 14:30.
6 MR. OBEDIN: 14:40, it's going by two second
7 intervals. I think it's going by, I don't know, 15 second intervals
8 maybe.
9 PVU CHIEF DEL RIO: Let me try something.
10 LT. SCHNEIDER: There's something else we could
11 try.
12 PVU CHIEF DEL RIO: Two -- what?
13 LT. SCHNEIDER: 1430. Is that what saying before?
14 PVU CHIEF DEL RIO: 2:30.
15 MR. OBEDIN: 2:30. So you still have 15 minutes to
16 go, you're at 2:14, 2:28, 2:29, 2:30 and one second, 2:30 and
17 11 seconds.
18 PVU CHIEF DEL RIO: That right there. That cool?
19 LT. SCHNEIDER: Works for me.
20 PVU CHIEF DEL RIO: This is the visiting area, right?
21 Oh, it gets bigger. Are we playing yet? We're not playing.
22 LT. SCHNEIDER: No, you have to hit it at the
23 bottom.
24 MR. OBEDIN: We're at 2:30 and 53 seconds. It's
25 moving in five second intervals.

1 PVU CHIEF DEL RIO: And the visitors are on this
2 side?

3 LT. SCHNEIDER: Yes. You can tell by the way
4 they're dressed.

5 PVU CHIEF DEL RIO: It looks like these guys on this
6 side are the inmates, and the visitors are over here.

7 LT. SCHNEIDER: It's different angles.

8 ALJ ROSS: You're going to have to explain what
9 you're looking at because it's going to come out terrible.

10 PVU CHIEF DEL RIO: Oh, I'm sorry.

11 We're looking at the visiting area. The visits have
12 already commenced, it looks like it's 2:33.

13 MR. OBEDIN: Just to be clear, when you say the
14 visits have commenced, you're speaking in general terms --

15 PVU CHIEF DEL RIO: Generally, yeah.

16 MR. OBEDIN: -- not with regard to Mr. Ovalle.

17 PVU CHIEF DEL RIO: Right. There are inmates and
18 civilians at this point. At one point there was nobody there.

19 ALJ ROSS: And how is the visiting room set up?

20 LT. SCHNEIDER: In what aspect?

21 ALJ ROSS: In terms of where the inmates would be
22 and where the visitors would be.

23 LT. SCHNEIDER: Every inmate is assigned a
24 position. Every -- all these, as you can tell here, you can't really see a
25 number, but every stool here is numbered.

1 ALJ ROSS: Okay.

2 LT. SCHNEIDER: When they walk in for their visit,
3 an inmate is told, you'll be a number ten, you'll be a number nine.
4 Sometimes their visitors will be there waiting for them already
5 because, obviously, they're assigned the same post except on the other
6 side of the table.

7 ALJ ROSS: Okay.

8 LT. SCHNEIDER: That's where they keep a
9 clipboard. I don't know how long they keep those. It's more just for
10 just having a nice organized visiting session, as opposed to long-term
11 record keeping.

12 MR. OBEDIN: Let me ask you one question in regard
13 to that.

14 LT. SCHNEIDER: Okay.

15 MR. OBEDIN: When an inmate receives a card, or
16 whatever, saying to go to the seat number --

17 LT. SCHNEIDER: There's no card, he's just told.

18 MR. OBEDIN: Oh, he's told, Go to seat number nine.

19 LT. SCHNEIDER: Right.

20 MR. OBEDIN: Is he told who the visitor is or just to
21 go to that seat --

22 LT. SCHNEIDER: No, it's --

23 MR. OBEDIN: -- as a visit?

24 LT. SCHNEIDER: It's really not necessary because 99
25 percent of the time I would say, they know who their visitor is going

1 to be,

2 PVU CHIEF DEL RIO: How is that?

3 LT. SCHNEIDER: They're made by appointments.

4 PVU CHIEF DEL RIO: How does that work?

5 LT. SCHNEIDER: The person -- like, an inmate's

6 family member will call up a number at the visiting unit, I'd like to

7 visit so-and-so on so-and-so date. There's a schedule by their last

8 name on when they can go and get an appointment for their visit.

9 PVU CHIEF DEL RIO: And is the inmate notified?

10 LT. SCHNEIDER: No, it's really not necessary. More

11 often than not they're just hoping that they get a visit. They're on the

12 phone all week planning, hey, when can you come up and see me?

13 MR. OBEDIN: Right. But that's general terms. You

14 don't know, specifically on this date, who was visiting?

15 LT. SCHNEIDER: No. But if they don't want to visit

16 with you, when they walk in, a lot of times an inmate will walk into a

17 visiting room, see who the visitor is and say, "No, I don't want to

18 waste my visit on this person, I want to wait for another person." And

19 they're escorted out.

20 MR. OBEDIN: Lieutenant, all I was asking was, when

21 an inmate is called down to visiting and he's told to go to a certain

22 seat number --

23 LT. SCHNEIDER: Right.

24 MR. OBEDIN: -- is he also told, go to that seat

25 number, you're being visited by so-and-so? Yes or no.

1 LT. SCHNEIDER: I wouldn't know, I'm not in
2 visiting. I would say probably, sometimes they would ask who's here
3 to visit me. I would say most of the time an inmate will already know
4 whose visiting, they already know. I'm just --

5 MR. OBEDIN: I'm asking you, I guess, what the
6 procedure is in the visiting area. You're here as the person from the
7 Department identifying visiting and talking about visiting. I'm asking
8 you a simple question, let me just --

9 LT. SCHNEIDER: I'm answering --

10 MR. OBEDIN: I'm asking you a yes or no question.
11 The question is, when an inmate comes down to visiting and a
12 member of the Sheriff's department says to that inmate, go to seat
13 number X, whatever the seat is, is the inmate given further
14 information who the visit is from or is he just told to go to a seat?
15 Yes or no?

16 LT. SCHNEIDER: It's not a yes or no answer.

17 MR. OBEDIN: All right.

18 LT. SCHNEIDER: If they want the information, they
19 can ask for it and they'll get the information. If they know who the
20 visitor is, they're not going to ask who their visitor is. And number
21 two, you want me to answer a question about a conversation that I'm
22 not around.

23 MR. OBEDIN: I'm asking what the general policy
24 from the Sheriff's Department regarding --

25 LT. SCHNEIDER: A policy on a conversation?

1 There's no policy on what conversation an officer would have an with
2 an inmate.

3 PVU CHIEF DEL RIO: Okay. Is it your statement
4 that an inmate -- let's say an inmate is told to sit in Seat 10. He
5 doesn't know who's visiting him and he shows up to Seat 10. And he
6 sees a person across there that he rather not have a visit with, he could
7 turn around and walk away?

8 LT. SCHNEIDER: Yes, he's free to leave, yes.

9 PVU CHIEF DEL RIO: So he can reject the visit?

10 LT. SCHNEIDER: Yes, he can.

11 PVU CHIEF DEL RIO: No matter who it is?

12 LT. SCHNEIDER: No matter who it is.

13 PVU CHIEF DEL RIO: Under whatever the
14 circumstance is, you don't ask them why they don't want the visit, he
15 just doesn't want it.

16 LT. SCHNEIDER: No.

17 MR. OBEDIN: What is if that visit is taking place
18 during the count, can that inmate walk away and go back up to his
19 cell?

20 LT. SCHNEIDER: No, not during a count. But if
21 they're done, they'll have you sit in a spot inside the visiting unit.
22 They'll have them sit away from the visitor and we'll tell the visitor he
23 does not want to visit with you, and we'll escort them out.

24 MR. OBEDIN: And do you know what time the count
25 is?

1 LT. SCHNEIDER: There's four counts.

2 MR. OBEDIN: Do you know, on October 10th, 2017,
3 whether there was a count at 2:30 in the afternoon?

4 LT. SCHNEIDER: I can guarantee there was a lock-in
5 at 2:30 for the security count, and then there was an official count
6 approximately 15 or 20 minutes later.

7 MR. OBEDIN: Okay. So this -- what we're looking at
8 right now, beginning at 2:33 and zero seconds, there is a lockdown
9 going on, a security lockdown?

10 LT. SCHNEIDER: That's correct.

11 MR. OBEDIN: Okay. Thank you.

12 PVU CHIEF DEL RIO: Is it necessary to look -- can
13 we just, like, have this and see the whole area?

14 LT. SCHNEIDER: You may be able to hit -- hold on,
15 let me see if there's a panel.

16 PVU CHIEF DEL RIO: I think I can just hit this and it
17 will open up.

18 LT. SCHNEIDER: Okay. Try it.

19 PVU CHIEF DEL RIO: Is this the entire visiting area?

20 LT. SCHNEIDER: Except for some hidden spots you
21 have over here.

22 PVU CHIEF DEL RIO: That will show up over here?

23 LT. SCHNEIDER: They will. There's three frames.

24 PVU CHIEF DEL RIO: Now I know what we're
25 doing. These will open whichever ones you want, right? Like, if I

1 want this one, I can click on that and it will open. Come on. Okay. I
2 wish I know how to work this.

3 LT. SCHNEIDER: That's why I have my IT guy
4 sitting next to my when I have to work it.

5 PVU CHIEF DEL RIO: Okay. I think we got to go
6 down here. Here we go.

7 LT. SCHNEIDER: This will tell you how many
8 frames, 1, 9, 16, so if you hit 1 --

9 PVU CHIEF DEL RIO: Then I'll just get one.

10 LT. SCHNEIDER: Right.

11 PVU CHIEF DEL RIO: Okay. Probably better if I'm
12 actually seeing this prior to today. Let me move this closer. I'm
13 blind.

14 And we don't know where he was sitting on this on this
15 particular day?

16 LT. SCHNEIDER: I wouldn't know.

17 PVU CHIEF DEL RIO: Okay. If the -- so we have to
18 find it. That's moving too fast for me.

19 You have cameras on this side?

20 LT. SCHNEIDER: They would be in the ceiling. So
21 you'll get it at most angles.

22 PVU CHIEF DEL RIO: Bear with me, I'm trying to
23 figure this out as we go along. Can I ask for Ericksen to come in? He
24 did this before so he must know what he's doing.

25 Are you calling Ericksen as a witness?

1 MR. OBEDIN: No.

2 PVU CHIEF DEL RIO: I'm going to ask for the Parole
3 Specialist Ericksen to come in. He did the prelim so he should know.

4 MR. OBEDIN: You're going to ask him to do what, to
5 run the tape?

6 PVU CHIEF DEL RIO: To run it up to the part where
7 he knows.

8 PAROLEE: I object.

9 MR. OBEDIN: I mean, he's not testifying to anything.
10 He's running the computer?

11 PVU CHIEF DEL RIO: Yeah, that's right.

12 PAROLEE: I don't want him in during the
13 proceedings.

14 MR. OBEDIN: Well, if he's a potential witness he
15 shouldn't come in, but you're not calling him.

16 PVU CHIEF DEL RIO: Correct. I'm not calling him.

17 PAROLEE: It was Officer Mencarelli who ran the
18 video.

19 MR. OBEDIN: Yeah, I believe that's correct, actually.
20 I believe it was Officer Mencarelli who ran the disc.

21 ALJ ROSS: Okay. When you find what you're
22 looking for, let me know.

23 MR. OBEDIN: It was Officer Mencarelli who did the
24 video at the prelim, Mr. Ericksen just --

25 ALJ ROSS: Okay.

1 THE COURT REPORTER: I was the reporter on the
2 preliminary hearing and I do remember Officer Mencarelli running
3 the video.

4 MR. OBEDIN: You remember that?

5 THE COURT REPORTER: Yes.

6 PVU CHIEF DEL RIO: Yes, Judge. Let's do it this
7 way, I think it will be easier this way. I'm going to ask for Ericksen to
8 come in. I guess he looked it at it on the day of the preliminary.

9 MR. OBEDIN: We all did. The Judge, myself, and
10 Ericksen, but nobody touched it.

11 PVU CHIEF DEL RIO: I'm going to ask --

12 ALJ ROSS: He's not a witness?

13 MR. OBEDIN: Yeah.

14 PVU CHIEF DEL RIO: We can call him as one.

15 ALJ ROSS: You can certainly do that now.

16 PVU CHIEF DEL RIO: So I'm going to do that.

17 ALJ ROSS: Why don't you find out if he knows how
18 to do this because I don't want to waste another hour while you try
19 and figure this out.

20 PVU CHIEF DEL RIO: Okay. He would be able to
21 identify Akre and Ovalle.

22 MR. OBEDIN: Well, I would object to him coming in.
23 Anyone can identify him.

24 ALJ ROSS: And I don't think Ericksen can do that,
25 right? Ericksen didn't play with the computer?

1 (Whereupon, a brief recess was taken.)

2 PVU CHIEF DEL RIO: Well, I have nothing further
3 for the Lieutenant, he's identified the DVD and the visiting area.

4 MR. OBEDIN: No, I understand. I have some
5 questions but I'll wait for Mr. Ovalle.

6 ALJ ROSS: Okay.

7 (Whereupon, a brief recess was taken.)

8 Did you want to identify what's on there or have
9 Mr. Obedin-question the Lieutenant?

10 PVU CHIEF DEL RIO: Well, we were able to key up
11 the visit in the visiting area which was identified by the Lieutenant as
12 being the visiting area at the Suffolk County Jail, in which Mr. Ovalle
13 was at on October 10, 2017. He's identified the video, he's identified
14 the video as being one that he created in the normal course of
15 business, he's attesting to the truthfulness and the accuracy based on
16 his certification, which we provided to the Court, and his observation
17 of the video. So I have no further questions at this time.

18 ALJ ROSS: Okay. Thank you.

19 Mr. Obedin?

20 MR. OBEDIN: Thank you, Your Honor.

21 Lieutenant Schneider, you had indicated that you are
22 the supervisor of the records room; is that correct?

23 LT SCHNEIDER: That's correct.

24 MR. OBEDIN: And you indicated that the records
25 room keeps, I think basically your wording was, any legal paperwork

1 that has to do with an inmate --

2 LT. SCHNEIDER: That's correct.

3 MR. OBEDIN: -- while they're in the Suffolk County
4 Correctional Facility?

5 LT. SCHNEIDER: And also after they're discharged,
6 also.

7 MR. OBEDIN: And after their discharged?

8 LT. SCHNEIDER: Yes.

9 MR. OBEDIN: Would that include any parole
10 paperwork if the person is a parole violator, if that's why they're being
11 held?

12 LT. SCHNEIDER: All the parole warrants would be at
13 our office, yes.

14 MR. OBEDIN: All the parole paperwork. Okay.

15 LT. SCHNEIDER: When I say parole paperwork, I
16 mean warrants, the individual warrants, the individual -- what's the
17 word -- the probation warrant, we'll have that in our records.

18 MR. OBEDIN: Okay. So not -- not the individual's
19 conditions --

20 LT. SCHNEIDER: That's correct.

21 MR. OBEDIN: -- of parole release?

22 LT. SCHNEIDER: No, I wouldn't have access to that.

23 MR. OBEDIN: None of that paperwork, okay.

24 Are you aware, at any time during Mr. Ovalle's
25 incarceration, and we're speaking approximately September 23rd of

1 2017 through present day, did anyone from the department of parole
2 ever contact the jail to prohibit or ask the jail to prohibit Mr. Akre
3 from visiting Mr. Ovalle?

4 LT. SCHNEIDER: Not to my knowledge.

5 MR. OBEDIN: Okay. Are you aware -- you've been
6 with the Suffolk County Sheriff's Office for a long time, Lieutenant,
7 working in the jail. Are you aware of any circumstance under which
8 parole has ever asked the jail to prohibit a civilian from visiting an
9 inmate?

10 LT. SCHNEIDER: I'm not aware of it, no.

11 MR. OBEDIN: Okay.

12 LT. SCHNEIDER: Just to be clear, though, I've only
13 been in my present position since November. So before that, as a
14 Duty Lieutenant, that would be information that the department
15 wouldn't make privy to me for any particular reason.

16 MR. OBEDIN: Since you've taken this capacity in
17 November --

18 LT. SCHNEIDER: No.

19 MR. OBEDIN: -- 2017?

20 LT. SCHNEIDER: Not to my knowledge.

21 MR. OBEDIN: Okay. Just one final question. Are
22 you aware, or have you ever been aware, of parole submitting any
23 conditions to the jail, specific conditions, under which an inmate must
24 abide, parole conditions, as opposed to the jail conditions?

25 LT. SCHNEIDER: If it ever happened, I'm not aware

1 of it,
2 MR. OBEDIN: Okay. Thank you.
3 All right. I have nothing further for the Lieutenant.
4 LT. SCHNEIDER: We're good?
5 ALJ ROSS: Thank you.
6 LT. SCHNEIDER: Thank you.
7 PVU CHIEF DEL RIO: Just have a seat here, Officer.
8 ALJ ROSS: Good afternoon, could you state your
9 name for the record?
10 SPO HNIS: Senior Parole Officer Scott Hnis.
11 ALJ ROSS: And your badge number?
12 SPO HNIS: 397.
13 ALJ ROSS: And would you raise your right hand to be
14 sworn in.
15 (Whereupon, Senior Parole Officer Hnis was sworn in
16 by ALJ Ross.)
17 ALJ ROSS: Thank you.
18 You may proceed, Mr. Del Rio.
19 PVU CHIEF DEL RIO: Officer, by whom are you
20 employed?
21 SPO HNIS: New York State Department of
22 Corrections.
23 PVU CHIEF DEL RIO: And do you know one Warren
24 Ovalle?
25 SPO HNIS: I do.

1 PVU CHIEF DEL RIO: Do you see him in the
2 courtroom?

3 SPO HNIS: I do.

4 PVU CHIEF DEL RIO: Could you identify him?

5 SPO HNIS: He's at the end of the table to your right.

6 PVU CHIEF DEL RIO: Let the record reflect he's
7 identified Mr. Ovalle.

8 Do you know one Robert Akre?

9 SPO HNIS: I do.

10 PVU CHIEF DEL RIO: And how do you know
11 Mr. Akre?

12 SPO HNIS: PO Samples supervised him for well over
13 a year, year and a half.

14 PVU CHIEF DEL RIO: And during the time that PO
15 Samples supervised him, Mr. Akre, what was your position?

16 SPO HNIS: Repeat that?

17 PVU CHIEF DEL RIO: What was your interaction,
18 with regards to Mr. Akre?

19 SPO HNIS: I would see him during office reports. I
20 also did make a home visit. I guess it was maybe three months after
21 his release.

22 PVU CHIEF DEL RIO: And would you recognize
23 Mr. Akre if he were here in the courtroom?

24 SPO HNIS: Definitely.

25 PVU CHIEF DEL RIO: And I'm going to draw your

1 attention to the screen.

2 Could you identify the parties on the screen?

3 SPO HNIS: Yes.

4 PVU CHIEF DEL RIO: And who can you identify?

5 SPO HNIS: Robert Akre is to the left and Warren

6 Ovalle is to the right.

7 PVU CHIEF DEL RIO: And as you sit here you're

8 absolutely sure Mr. Akre is to the right?

9 SPO HNIS: Yes.

10 PVU CHIEF DEL RIO: I have no further questions.

11 ALJ ROSS: Mr. Obedin?

12 MR. OBEDIN: Officer Hnis, did you ever supervise

13 Robert Akre?

14 SPO HNIS: He was supervised by Parole Officer Judy

15 and Parole Officer Judy was a parole officer that I was supervising.

16 MR. OBEDIN: Okay. But did you ever supervise --

17 directly supervise Mr. Akre?

18 SPO HNIS: No.

19 MR. OBEDIN: Okay. Nothing further.

20 PVU CHIEF DEL RIO: I have nothing further, Your

21 Honor.

22 ALJ ROSS: Nothing? Thank you.

23 SPO HNIS: Thank you.

24 PVU CHIEF DEL RIO: The Department rests, Your

25 Honor.

1 ALJ ROSS: Okay.

2 MR. OBEDIN: Your Honor, I'm going to -- Officer
3 Hamlette needs to be here. And the parole office hasn't stated any
4 valid reason for her not being here. There's some vague reference to
5 her being out on medical leave, but it was indicated that she is still a
6 member of the Department of Parole, she was Mr. Ovalle's direct
7 supervisor during this timeframe of these violations, and there's been
8 no explanation as to why she has not responded to a subpoena that
9 was served upon her in this instance.

10 ALJ ROSS: Do you have a response?

11 PVU CHIEF DEL RIO: Your Honor, I'm surprised as
12 well. However, it's my understanding of when an individual is on
13 medical leave or extended medical leave that they are not on duty,
14 they're not considered on duty. And this is the reason why we would
15 have to subpoena that individual. Attempts were made to subpoena
16 her and call her and ask her to be present before this court. She has
17 not responded.

18 We are not aware of whether she's in the hospital right
19 now or maybe she's out of the country or merely just not answering
20 her door. We made a good faith effort to bring her here before the
21 Court. We didn't subpoena her this morning, we subpoenaed her
22 numerous days ago. We made numerous calls to her house, we called
23 her state phone, we called her cell phone, we called her home phone,
24 and she's not responded.

25 At this point, I think the Department should do a

1 wellness visit to see, you know, what her medical condition is.
2 However, as the Court is well aware, when an employee is on
3 extended medical leave or is on a leave of absence, there is no criteria
4 or mandate for that individual to be brought, either before the Court or
5 to -- or to the office against her medical requirements, other than
6 providing a subpoena and asking that individual to come before the
7 Court.

8 Now, we have made a good faith effort -- I mean, we'll
9 continue to do so if the Court wishes to adjourn the case. I believe
10 that she's -- I agree with the defense counsel that she would be a vital
11 witness to the Court to provide any kind of information in regards to
12 whether she modified or gave any different instruction. However, the
13 senior parole officer had indicated to the Court that he was
14 supervising the parole officer during that period and at no time did he
15 authorize, at no time did she request any modification. As a matter of
16 fact, in preparing the parole violation to the Court and against
17 Mr. Ovalle, Ms. Hamlette was the one that drew up the charges
18 charging him with having contact with Mr. Robert Akre against her
19 direction and against her conditions.

20 So I don't think that the parole officer would come in
21 here and contradict anything that she's already put on before the Court
22 with regards -- in reference to a parole violation and the charges. So
23 it's highly unlikely that she would come before the Court and say that,
24 in fact, she gave her permission to have this contact and yet charge
25 him with having the contact.

1 MR. OBEDIN: Well, Your Honor, while Mr. Del Rio
2 might be right that it's in his opinion may not be likely, it's my
3 experience and probably the Court's experience, that many times
4 witnesses will say or do one thing and then contradict themselves
5 when on the record.

6 "She is the most vital of all the witnesses here because
7 she was the actual parole officer supervising Mr. Ovalle during the
8 timeframe in question. Officer Evans preceded that time, Supervising
9 Officer Judy had no direct contact with Mr. Ovalle, nor was he
10 present at any of the meetings between Officer Hamlette and
11 Mr. Ovalle. And parole has not given any good reason as to why
12 Officer Hamlette is not here. We don't know that she's out of the
13 country, we don't know that she's unavailable because she's in the
14 hospital. What we do know is that she was subpoenaed, has not
15 responded to multiple attempts to contact her, and is still on the
16 payroll. She's an employee of parole.

17 ALJ ROSS: All right. I believe under the McGee case
18 there has to be good cause shown why a witness who should be here
19 and is vital to the prosecution does not attend the hearing. Because in
20 all cases, the parolee has the right to cross-examine that witness and
21 anything she would have to say. However, the reality is that parole
22 must use due diligence in order to bring a witness in. In this case, the
23 fact that the witness is subpoenaed, that Mr. Juste went to that house
24 to serve a subpoena, that she did not respond at all, that he left several
25 phone messages, I would believe, is due diligence in this case. And

1 the other part is, she's not the only witness here. There were -- Parole
2 Officer Juste came in, he supervised her. They apparently did this
3 violation of parole report together, he was aware of the case.

4 So at this point, I believe that they have shown good
5 cause why she's not here maybe as an employer, not as much, but I
6 believe that PO Juste did.

7 MR. OBEDIN: Your Honor, you'll note my objection,
8 please --

9 ALJ ROSS: Yes.

10 MR. OBEDIN: -- for the record?

11 And given that fact and the fact that I'm not going to
12 have the opportunity to cross-examine Officer Hamlette, I'd ask that I
13 be allowed to recall Officer Evans to ask her a few questions which I
14 would have perhaps asked of Officer Hamlette. I don't think there's
15 any harm in it, she's still here.

16 PVU CHIEF DEL RIO: I have no objection.

17 ALJ ROSS: Okay. We'll bring her in.

18 MR. OBEDIN: Thank you.

19 ALJ ROSS: You're still under oath, Ms. Evans.

20 PO EVANS: Yes.

21 ALJ ROSS: Okay.

22 Go ahead, Mr. Obedin.

23 MR. OBEDIN: Thank you, Your Honor.

24 Officer Evans, I just have a few other questions for
25 you.

1 You still supervise parolees even though you don't
2 supervise Mr. Ovalle; is that correct?

3 PO EVANS: Yes.

4 MR. OBEDIN: And you supervised or are now
5 supervising parolees who are currently incarcerated for a violation, I
6 assume?

7 PO EVANS: Yes.

8 MR. OBEDIN: So in your experience, you have
9 people who are out in community supervision who you supervise, and
10 you also have parolees who have been alleged -- who have violated
11 and so are in custody?

12 PO EVANS: You're correct.

13 MR. OBEDIN: Okay. When -- let's go to Mr. Ovalle,
14 for instance, when you were supervising him he was out of custody,
15 correct?

16 PO EVANS: Right.

17 MR. OBEDIN: You had conditions with him where he
18 would have to do office visits; is that fair to say?

19 PO EVANS: Yes.

20 MR. OBEDIN: He would have to come see you?

21 PO EVANS: Yes.

22 MR. OBEDIN: Do you recall how often that was?
23 Was it weekly, or.

24 PO EVANS: Mr. Ovalle -- Mr. Ovalle, I believe, came
25 to me --

1 MR. OBEDIN: I'm not going to hold you to this.

2 PO EVANS: Yeah, because --

3 MR. OBEDIN: Do you think it was weekly or once
4 every two weeks, or?

5 PO EVANS: In the beginning I think it was weekly,
6 then it went to once every two weeks.

7 MR. OBEDIN: Okay.

8 PO EVANS: Yeah.

9 MR. OBEDIN: Okay. And when someone you're
10 supervising is in custody for a violation, obviously they're not out in
11 the community, so you're not doing community supervision of them,
12 correct?

13 PO EVANS: Right.

14 MR. OBEDIN: Do you still maintain that visiting
15 schedule? Will you come and visit the parolee who is in custody to
16 do a visit with them?

17 PO EVANS: No, but they're still on my caseload.

18 MR. OBEDIN: I understand they're on your caseload,
19 but you're not following the same provisions that you follow when the
20 person is out of custody, correct?

21 PO EVANS: Right, correct.

22 MR. OBEDIN: When the person is out of custody you
23 tell him, he has to report to you --

24 PO EVANS: Yeah.

25 MR. OBEDIN: -- for an actual face-to-face, like,

1 across a desk, however many times a week or a month that is, correct?

2 PO EVANS: Correct.

3 MR. OBEDIN: And again, just to be clear, when that
4 individual is incarcerated, you don't go and visit them just to continue
5 to maintain that meeting?

6 PO EVANS: No.

7 MR. OBEDIN: If it's once every two weeks you don't
8 go once every two weeks to meet with the individual?

9 PO EVANS: No.

10 MR. OBEDIN: Okay. So you would say that it's fair
11 to say that that's a specific condition related to when someone is out
12 of custody, not under violation?

13 PO EVANS: That I visit them?

14 MR. OBEDIN: That they have to visit you.

15 PO EVANS: Okay. So the question you're asking is
16 that when a person is incarcerated, do they come visit me? No.

17 MR. OBEDIN: And the other way around, do you go
18 visit them?

19 PO EVANS: No, but they're still under my
20 supervision.

21 MR. OBEDIN: So on your caseload?

22 PO EVANS: And under my supervision.

23 MR. OBEDIN: Okay. When you say under your
24 supervision, you're not visiting them while they're in the jail?

25 PO EVANS: No.

1 MR. OBEDIN: Are you receiving any type of weekly
2 report from the facility that they're in, as to whether they are
3 maintaining your conditions of parole release? For an example,
4 curfew, are you receiving a report as to whether or not they're
5 violating their curfew when they're incarcerated?

6 PO EVANS: Well, I would do that, not them. And
7 yes, they still -- I still maintain that they're in until they come out into
8 the community. So yes, I still do -- no, I don't physically go to the
9 jail, they don't physically come to me, but they're still under my
10 supervision.

11 MR. OBEDIN: So based on the fact that they're still
12 under supervision, are they still under the conditions -- all the
13 conditions of parole supervision?

14 PO EVANS: Most definitely. Most definitely.

15 MR. OBEDIN: So they still have to maintain their
16 curfew, correct?

17 PO EVANS: Well they still have to maintain any
18 special conditions that are -- so curfew, no, because obviously he's
19 inside, so he wouldn't maintain curfew --

20 MR. OBEDIN: Okay.

21 PO EVANS: -- however, he would still maintain those
22 special conditions that are implemented.

23 MR. OBEDIN: And is that written anywhere? Do you
24 go over that with him where it's written that it says, even if you're
25 violated and you're incarcerated you still must maintain the special

1 .. conditions of parole?

2 PO EVANS: Well, when I first review the conditions
3 with him when we first sit down, I make sure that it's clear that you're
4 under my supervision whether you are incarcerated or not
5 incarcerated until your maximum expiration date. I do explain that.

6 MR. OBEDIN: Okay.

7 PO EVANS: These conditions, if you have the
8 conditions sheet, they are until you max out, which is --

9 MR. OBEDIN: No, I understand that. I understand.

10 PO EVANS: Oh, okay.

11 MR. OBEDIN: I want you to listen to my question.

12 PO EVANS: Okay.

13 MR. OBEDIN: Because curfew is a condition that's
14 one of his conditions until you change it or he maxes out.

15 PO EVANS: Right.

16 MR. OBEDIN: But when he's incarcerated, he's not
17 under that condition of --

18 PO EVANS: Right.

19 MR. OBEDIN: -- parole supervision?

20 PO EVANS: Because he's not out, right.

21 MR. OBEDIN: So what I'm asking you is, in this
22 instance there's a special condition. The special condition is that he's
23 not to associate with Robert Akre, correct?

24 PO EVANS: Right.

25 MR. OBEDIN: By the way, may I ask you what the

1 reason for that special condition was?

2 PO EVANS: Because Robert Akro was the
3 co-defendant on this crime that he's on parole for.

4 MR. OBEDIN: Okay. And that's the whole reason for
5 the condition? Because he's not allowed to -- he's not allowed to meet
6 with or be with the co-defendant of a crime? Is that the reason for the
7 condition?

8 PO EVANS: Correct.

9 MR. OBEDIN: Simply because he's a co-defendant?

10 PO EVANS: Well because he's on parole supervision,
11 and you're not supposed, you know, you're not supposed to be
12 consorting with disreputable places or people.

13 MR. OBEDIN: Right.

14 PO EVANS: So I want to keep him safe and out of
15 trouble.

16 MR. OBEDIN: Okay. So that's the reason for the
17 condition?

18 PO EVANS: Yes.

19 MR. OBEDIN: Okay. But when he's incarcerated,
20 he's only with disreputable people who are charged with crimes or
21 have committed crimes, isn't that correct?

22 PO EVANS: Okay, but --

23 MR. OBEDIN: Isn't that correct?

24 PO EVANS: Not by choice. He has to be there.

25 MR. OBEDIN: That's correct, not by choice. But he's

1 in. And he's -- so your rationale for having the special condition to
2 make sure that he stays out of trouble and that he's not around
3 disreputable people and he's not around a co-defendant who has
4 committed a crime as well. That's also not relevant while he's
5 incarcerated --

6 PO EVANS: No, it --

7 MR. OBEDIN: Because it plays right in with the fact
8 that he's living 24/7 with these people.

9 PO EVANS: Can I say something? When you're in
10 jail you have no choice if you're around disreputable people.

11 ALJ ROSS: Stop testifying.

12 PO EVANS: However, if someone comes to that jail
13 and you know that they are a disreputable person or co-defendant, you
14 have the right to say, no, I don't want to see them, especially if you
15 know that's part of your special conditions. So Mr. Akre was not an
16 inmate in the jail, he came to the jail to visit Mr. Ovalle --

17 MR. OBEDIN: Right.

18 PO EVANS: -- which was in direct violation of a
19 special condition that I imposed.

20 MR. OBEDIN: Okay.

21 PO EVANS: That's all I'm saying.

22 MR. OBEDIN: Okay. So based on what you're
23 saying, if Mr. Akre had been arrested for something and was in the
24 jail with Mr. Ovalle and they were speaking, seeing each other in the
25 jail, that would not be a violation of his special conditions; is that

1 correct?

2 PO EVANS: I have no control over what they do
3 when a person is incarcerated. It's when -- Mr. Akre was not
4 incarcerated, he came to the jail.

5 MR. OBEDIN: Okay.

6 PO EVANS: I can only go off of what I see. I can't go
7 off of what if, what if. I don't know that. That's not the case.

8 MR. OBEDIN: Well, this is a simple yes or no
9 question though.

10 If Mr. Akre were incarcerated with Mr. Ovalle at the
11 same time and they were seen together and there was no camera in a
12 jail, that would not be a violation

13 PVU CHIEF DEL RIO: I'll concede to that.

14 PO EVANS: Yeah. I mean, that has nothing to do
15 with --

16 PVU CHIEF DEL RIO: That would not be a violation.

17 PO EVANS: Okay.

18 MR. OBEDIN: Well I was just looking for a simple
19 yes or no answer.

20 PVU CHIEF DEL RIO: I know what he's doing.

21 PO EVANS: Oh, okay.

22 MR. OBEDIN: So with regard to the special
23 conditions, I know you indicated that you went through them very
24 carefully with Mr. Ovalle when he signed them.

25 PO EVANS: Okay.

1 MR. OBEDIN: Did you explain to him at the time
2 what the basis for that special condition was, that you wanted to be
3 sure that he didn't -- that he wasn't around disreputable people? That
4 you wanted to make sure while he's under your supervision that he did
5 everything right, didn't get back into trouble, everything like that?

6 PO EVANS: While Mr. Ovalle was under my
7 supervision, I made sure that every condition was explained to him
8 under my -- and my goal was for him to re-integrate back into
9 society --

10 Mr. OBEDIN: Right.

11 PO EVANS: -- fully, and be able to complete parole.
12 I was not that type of officer --

13 MR. OBEDIN: Right.

14 PO EVANS: -- that tried to get him in trouble. We
15 had a very good rapport.

16 MR. OBEDIN: Officer --

17 PO EVANS: A very good rapport.

18 MR. OBEDIN: -- I just want to say, I'm not trying to
19 make you out to be anything --

20 PO EVANS: Right.

21 MR. OBEDIN: -- and I'm not speaking aggressively.
22 I'm just asking a question.

23 PO EVANS: Okay.

24 MR. OBEDIN: So just try to listen to my question --

25 PO EVANS: Okay.

1 MR. OBEDIN: -- so that we can move on. When -- at
2 the time that the special condition about Mr. Akre was read to him
3 and explained to him and he signed it, did you explain what the
4 reason for that special condition was?

5 PO EVANS: Yes.

6 MR. OBEDIN: And was the explanation what you've
7 told in here already today?

8 PO EVANS: Yes, Because I did not want him
9 consorting with anyone who was in connection with the crime while
10 they were on supervision. I did not want him consorting with anyone
11 that could possibly get him into any type of trouble or, you know --

12 MR. OBEDIN: Right. Okay. Okay.

13 And do you have Mr. Ovalle sign anything, or do you
14 have anything in writing, or did you tell him that if he's violated and
15 he's incarcerated that he is still required to follow all conditions of his
16 parole supervision including the special conditions?

17 PO EVANS: No.

18 MR. OBEDIN: Okay. Thank you.

19 I have nothing further, Judge.

20 PVU CHIEF DEL RIO: I'd like to re-direct.

21 ALJ ROSS: You can go ahead.

22 PVU CHIEF DEL RIO: The special condition related
23 specifically to Mr. Akre, why did you specifically put Mr. Akre?

24 PO EVANS: Because --

25 MR. OBEDIN: Judge, that was asked and answered. I

1 object now.

2 ALJ ROSS: When was that? I don't remember that
3 being asked and answered.

4 MR. OBEDIN: I asked it and the officer answered.

5 PVU CHIEF DEL RIO: What happened was, he
6 answered it but he stood on consorting with every person inside the
7 facility who has a criminal record. In this particular case --

8 MR. OBEDIN: Okay. I'll withdraw my objection.

9 PVU CHIEF DEL RIO: This is different --

10 ALJ ROSS: Okay. You can answer the question.

11 PVU CHIEF DEL RIO: Let me ask you a question --

12 ALJ ROSS: Well, do you want her to answer the first
13 one?

14 PVU CHIEF DEL RIO: She already answered it.

15 PO EVANS: I didn't answer it, because he's a
16 co-defendant.

17 PVU CHIEF DEL RIO: Now, along the same lines as
18 defense counsel, is it possible for a number of inmates -- not inmates,
19 a number of parolees to participate and take place at a group
20 counseling at a drug treatment facility?

21 PO EVANS: Most definitely.

22 PVU CHIEF DEL RIO: Is it possible for a number of
23 individuals under parole supervision to actually take place --
24 participate in a group activity even within the parole building?

25 PO EVANS: Most definitely.

1 PVU CHIEF DEL RIO: And is it possible for group
2 counseling to exist, say like Fortune Society, where maybe five people
3 under parole supervision are participating?

4 PO EVANS: Most definitely.

5 PVU CHIEF DEL RIO: However, those five people
6 who are participating in the Fortune Society group counseling, if they
7 were arrested at 1 o'clock in the morning, would that be okay?

8 PO EVANS: No.

9 PVU CHIEF DEL RIO: Let me ask you another
10 question. If an individual under your supervision, who you've
11 violated, and you've violated a number of people?

12 PO EVANS: Most definitely.

13 PVU CHIEF DEL RIO: And you probably have a
14 number of people who are currently in the parole violation process.

15 If any of those individuals are arrested for any criminal
16 activity within the correctional facility, would you receive a hit
17 notice?

18 PO EVANS: Within the correctional facility?

19 PVU CHIEF DEL RIO: Yes.

20 PO EVANS: Yes.

21 PVU CHIEF DEL RIO: Would you receive
22 notification that they were arrested?

23 PO EVANS: Yes.

24 PVU CHIEF DEL RIO: Would you receive
25 notification of the behavior that took place within the facility?

1 PO EVANS: Yes.

2 PVU CHIEF DEL RIO: And would you prepare a

3 parole violation as a result of that behavior being reported?

4 PO EVANS: Yes.

5 PVU CHIEF DEL RIO: No further questions.

6 MR. OBEDIN: And Officer Evans, not committing a

7 new crime is clearly a condition of parole, correct?

8 PO EVANS: Yes, correct.

9 MR. OBEDIN: And that's a standard condition that

10 comes from upstate with the individual or parolee, right?

11 PO EVANS: Yes.

12 MR. OBEDIN: That's never a special condition. You

13 don't have to write in, and by the way you also can't commit any new

14 crimes.

15 PO EVANS: Right.

16 MR. OBEDIN: So when Mr. Del Rio asks if someone

17 within a facility commits a new crime, that, of course, is a violation of

18 their parole supervision and a violation of a standard condition of

19 their parole supervision.

20 PO EVANS: Yes.

21 MR. OBEDIN: No parolee is on parole supervision

22 within the state and doesn't have that standard condition of parole that

23 they can't be, you know, can't commit a new crime; correct?

24 PO EVANS: Right.

25 MR. OBEDIN: Okay. And the three examples that

1 Mr. Del Rio stated about parolees being together, whether it's some
2 type of drug rehabilitation or community center or whatever the case
3 may be, those are all -- those three examples all deal with parolees
4 who are out of custody and on community supervision, correct?

5 PO EVANS: They can be inside of the jail or out.

6 MR. OBEDIN: They could be doing drug treatment
7 within the jail?

8 PO EVANS: Some of them do drug treatment within
9 the jail.

10 MR. OBEDIN: But obviously they're always together
11 in the jail, it's not a special situation?

12 PO EVANS: Right.

13 MR. OBEDIN: Okay. I have nothing further.

14 ALJ ROSS: Thank you.

15 Do you have anything further?

16 PVU CHIEF DEL RIO: Yes, just one more question,
17 just for arguments sake.

18 MR. OBEDIN: Well, I'm going to object for
19 arguments sake, what's the reason?

20 PVU CHIEF DEL RIO: Not for arguments sake.
21 Along the lines of defense counsel's question.

22 I just want to show the defense counsel the certificate
23 of release to supervision with Mr. Ovalle's name on it. Would you
24 agree?

25 MR. OBEDIN: No, I would not. I don't see

1 Mr. Ovalle's name -- oh, I see his name typed at the top if that's what
2 you're asking me. Okay.

3 PVU CHIEF DEL RIO: And would you agree that it
4 says Certificate of Release, post-release supervision and all that?

5 MR. OBEDIN: I'm not sure why I'm answering
6 questions.

7 ALJ ROSS: Right. What's your point? He should
8 have received a copy of that when Mr. Ovalle violated.

9 PVU CHIEF DEL RIO: He did get a copy. I'm going
10 to show you this document. Are you familiar with that document?

11 PO EVANS: Mm-hm.

12 PVU CHIEF DEL RIO: Could you identify that?

13 PO EVANS: Yes.

14 PVU CHIEF DEL RIO: What is it?

15 PO EVANS: Certificate of release to post-release
16 supervision.

17 PVU CHIEF DEL RIO: And I'd like to draw your
18 attention to Rule No. 7 of the conditions of release.

19 PO EVANS: Would you like me to read it?

20 PVU CHIEF DEL RIO: Yes, if you don't mind.

21 MR. OBEDIN: I'd like to see it first?

22 I object to the relevance of this, Judge. I don't know
23 where Mr. Del Rio is going.

24 PVU CHIEF DEL RIO: It's along the lines of defense
25 counsel question. He questioned the parole officer regarding special

1 conditions of release, one of which is Rule No. 8 and that is to not
2 commit a new crime.

3 ALJ ROSS: Correct.

4 PVU CHIEF DEL RIO: Secondly, Number 7 is not to
5 fraternize with anyone he knows to have a criminal record. Now, we
6 understand that the parole officer of the Department cannot control
7 the number of inmates incarcerated in the jail.

8 ALJ ROSS: Save that for your summation.

9 PVU CHIEF DEL RIO: However, fraternizing and
10 accepting visits with someone who has an option not to, is a violation
11 of Rule No. 7, is a direct violation of Rule No. 7. So a special
12 condition may not be imposed, however, this parole officer imposed a
13 special condition, specifically to his co-defendant.

14 ALJ ROSS: Okay.

15 PVU CHIEF DEL RIO: If there's no objection, I'd like
16 the Court to take a copy of the Certificate of Release.

17 ALJ ROSS: It's already in evidence, came in in the
18 beginning.

19 PVU CHIEF DEL RIO: I have nothing further.

20 MR. OBEDIN: Nothing further.

21 ALJ ROSS: Thank you again.

22 You rested, Mr. Del Rio?

23 PVU CHIEF DEL RIO: I rested a long time ago. It
24 was defense counsel who called Ms. Evans.

25 ALJ ROSS: Are you putting on anything else?

1 MR. OBEDIN: No, no witness.

2 Mr. Ovalle is asking if he can read a statement into the
3 record.

4 ALJ ROSS: In regard to what?

5 PAROLEE: To my parole.

6 ALJ ROSS: No. If you want something read in, it's up
7 to Mr. Obedin to do that, Mr. Ovalle.

8 MR. OBEDIN: May I have a moment, Judge?

9 ALJ ROSS: Yes.

10 (Whereupon, a brief recess was taken.)

11 MR. OBEDIN: All right.

12 No, we're not calling any witnesses, Judge.

13 ALJ ROSS: Any motions or anything?

14 MR. OBEDIN: Your Honor, I'm just going to renew
15 again my objection to proceeding without Officer Hamlette. I think
16 that in this instance, while, yes, she is one of a number of witnesses,
17 she is the truly essential witness. She's the officer who purportedly
18 wrote up the violations. She is the officer who was supervising
19 Mr. Ovalle during this period of violation and she's the only one who
20 hasn't testified here. And Supervising Officer Judy's testimony --
21 Juste's, excuse me -- Juste's testimony, does not rise to the level that
22 would be necessary in a situation where we're dealing with an
23 individual's liberty. He was not -- and he indicated quite specifically
24 that he was not present for any of the meetings between Mr. Ovalle
25 and Officer Hamlette at the time she took over as his parole officer.

1 And again, I would just state that I think that it's
2 essential that we either have Officer Hamlette or we have a real
3 reason, a valid reason why she's not present.

4 ALJ ROSS: Well, I've already ruled on that. And I'll
5 say the valid reason is basically that parole could not find her.

6 MR. OBEDIN: But she's still an employee of parole;
7 is that correct? She's still on the payroll?

8 PVU CHIEF DEL RIO: Yes, she's on the payroll;
9 however, she's on extended leave, on sick leave. And we can't compel
10 people to come in, other than by subpoena.

11 ALJ ROSS: Which was tried.

12 PVU CHIEF DEL RIO: And we did make numerous
13 efforts to get her here.

14 MR. OBEDIN: And I'll just state, just finally, that we
15 haven't received anything from parole, neither a letter, nothing
16 indicating what the -- why she's on leave. We didn't know anything,
17 other than an employee of parole that is essential to this case is
18 refusing to respond to a subpoena and we don't know why.

19 ALJ ROSS: Have you ever heard of HIPAA?

20 MR. OBEDIN: Yes, of course I've heard of HIPAA.

21 ALJ ROSS: That's your answer.

22 PVU CHIEF DEL RIO: It's not the practice of the
23 Department to question anybody's medical issues with regard to --

24 MR. OBEDIN: I'm not asking for her medical
25 condition.

1 ALI ROSS: Did you want to make a summation,
2 Mr. Obedin?

3 MR. OBEDIN: Well, we would go in whatever order
4 the Judge asked us to go in. Yes, I would.

5 Your Honor, what we have seen here is an allegation
6 of a violation of a special condition of supervised release. We have a
7 video of a jail visit between Mr. Ovalle, who was incarcerated, and
8 Mr. Akre, a co-defendant no longer on parole supervision who came
9 to visit him.

10 Officer Evans stated quite clearly for the record what
11 her reason for having that special condition imposed upon Mr. Ovalle
12 was, and she stated quite clearly that it was to make sure that while he
13 was released to the community, he didn't have any speed bumps or be
14 with anybody who could potentially derail him from adequately
15 integrating, re-integrating, back into society, which is, quite clearly,
16 her job. I mean, that's exactly what she should be doing, trying to get
17 people on parole re-integrated positively into society. But what
18 happened here, what occurred here was not out in the community, it
19 was in -- while Mr. Ovalle was incarcerated. And we know that
20 Mr. Ovalle doesn't set up visits while he's incarcerated. Mr. Ovalle
21 doesn't have control of that circumstance, people on the outside set up
22 those visits. As far as we're aware, no one from parole, even though
23 it's quite clear that they knew that these visits were taking place, no
24 one from parole contacted the jail, attempted to stop these visits,
25 which I suppose they could have done.

1 So what we see on October --

2 ALJ ROSS: 14th?

3 PVU CHIEF DEL RIO: October 10th? The video?

4 MR. OBEDIN: October 10th, yes, it was October
5 10th, is a visit that Mr. Ovalle is called down to attend. Again, there's
6 no testimony that he knows who he's going to be seeing. He goes, he
7 sits down, and what we did hear from Lieutenant Schneider, this is
8 during a security lockdown and he can't just get up and leave and go
9 back up to his jail cell, much in the same manner that he can't control
10 fraternizing with other felons while he's in a facility; much in the
11 same way that he can't control curfew while he is within the facility,
12 he can't control visits while he's in the facility, and he certainly can't
13 control his own movement in the facility if he's told that it's a
14 lockdown and he has to stay put.

15 Even if the Court were to find that this is a violation, I
16 would argue that it was not a violation that rises to the level making it
17 serious enough to warrant an incarceratory period. Mr. Ovalle has
18 been in custody since September 23rd. I don't think that it is
19 coincidental that parole waited until a writ was entered by a supreme
20 court justice dismissing a prior warrant and a prior violation against
21 Mr. Ovalle before then turning around and filing this new violation
22 which post-dates back to late September when Mr. Ovalle had been
23 sitting for two-and-a-half months already. They could have
24 supplemented that violation at any time. And now, here we are, six
25 months later, Mr. Ovalle has been sitting incarcerated all this time, and

1 the violation that comes before Your Honor is a jail visit, something
2 that is beyond his control.

3 I argued at the preliminary hearing, and I'll argue
4 again, I'm the one who raised it. Clearly, if this had been a new arrest,
5 if he had been charged with committing a new crime while
6 incarcerated, an assault or whatever, there would be no argument here
7 because that's a standard condition of parole and that is within
8 Mr. Ovalle's control. He can't commit new crimes. This is not a new
9 crime. This is having a visit, and a controlled visit within a facility
10 where no contraband can be passed. Nothing -- we saw two men
11 sitting, no papers, nothing could be written down, no paperwork could
12 be passed. None of the safeguards that a parole officer might be
13 concerned with while an individual is out on community release, in
14 terms of fraternizing or not fraternizing with an individual are in play
15 in a controlled setting such as this.

16 So I would ask, Your Honor, first of all, to find that
17 there is no violation. And if Your Honor finds there is any violation,
18 that it doesn't rise to the seriousness that would be necessary.
19 Additionally, and again, we don't have Officer Hamlette here, but I
20 believe that there is a directive from State of New York Department
21 of Corrections and Community Supervision saying that any time a
22 parole -- a parolee transfers parole officers, the receiving officer will
23 also review all special conditions currently in place with the releasee.
24 We don't know that that took place. We know that Officer Evans, by
25 her testimony, reviewed the conditions and had Mr. Ovalle sign them

1 and acknowledge them. We have no idea whether Officer Hamlette
2 did that. We certainly have nothing signed from Officer Hamlette as
3 far as special conditions with Mr. Ovalle. And again, unfortunately,
4 we don't have Officer Hamlette here, but that should not enure to the
5 disadvantage to Mr. Ovalle. That's not Mr. Ovalle's fault that Officer
6 Hamlette is not available. And certainly Supervising Officer Juste
7 didn't provide any paperwork of that kind, nor would I expect that he
8 would have that. But we don't know, without Officer Hamlette,
9 whether that directive was followed.

10 So for all of those reasons, Judge, I would ask to find
11 in favor of Mr. Ovalle.

12 ALJ ROSS: Okay.

13 MR. OBEDIN: Yes. And I'm sorry, one final thing,
14 that's correct. And Officer Evans testified, I asked her point-blank
15 whether she actually reviewed the fact with Mr. Ovalle that he still
16 had to follow all his conditions of parole release while incarcerated,
17 and she specifically reviewed that fact with him, and she said no. So
18 for that reason as well.

19 ALJ ROSS: Mr. Del Rio?

20 PVU CHIEF DEL RIO: Your Honor, I believe that the
21 Department has substantiated the charges before the Court that on the
22 day specifically stated on the parole violation that Mr. Ovalle did have
23 contact with his co-defendant, Mr. Robert Akre.

24 Mr. Ovalle knows that Mr. Akre was his co-defendant.
25 Parole Officer Evans gave him a special condition specific to Robert

1 Akre. There's no need to give special conditions to not fraternize with
2 other individuals known to have a criminal record because that's, as
3 the defense counsel stated, standard conditions of parole. So
4 Mr. Akre was Mr. Ovalle's co-defendant and an individual who has a
5 criminal record who Mr. Ovalle knew has a criminal record, because
6 the convictions were both of them together committing a crime and
7 they were both under parole supervision.

8 Fraternizing is a standard condition of release and
9 fraternizing is against the rules and regulation. Defense counsel
10 would have the Court believe that the entire parole violation is the
11 subject of a special condition; however, the Court, after reviewing the
12 charges, will also note that there are also numerous Rule 7 parole
13 violations, which is fraternizing, which does not need a special
14 condition, with individuals that are -- who have criminal records and
15 that the parolee has a knowledge of that. Now, I submit to the Court
16 that this parolee had knowledge that Mr. Akre had a criminal record.

17 With regards to Mr. Ovalle's responsibilities to avoid
18 Mr. Akre, the Lieutenant had indicated to the Court that Mr. Ovalle
19 had every right to refuse the visit and that even if there was a count
20 going on and there was no movement, that if Mr. Ovalle refused the
21 visit he would be isolated and placed in a separate cell, a holding area,
22 so that he doesn't have to participate in that visit. That other people
23 who are other inmates also come down and don't want to lose a visit
24 by visiting with someone who they were not intending to be visited
25 by, refuse it in order not to lose a visit.

1 Now, I submit to the Court that Mr. Ovalle has a
2 responsibility to say no when Mr. Akre visits him because he knows
3 he should not be engaged in visits with Mr. Akre in any way, shape,
4 or form.

5 And I'll submit to the Court as well, Mr. Akre's license,
6 which was submitted into evidence, which was identified and further
7 taken, has also Mr. Ovalle's address on it, in which, Mr. Akre was a
8 resident in his own home and they even lived in the same residence.

9 MR. OBEDIN: Well, that I object to that. That was
10 not part of this violation. And just the fact that --

11 ALJ ROSS: That objection is sustained.

12 PVU CHIEF DEL RIO: This is not an accidental
13 occurrence that they ran into each other. That they ran into each other
14 at the drug treatment, or that they saw each other accidentally in the
15 lobby of the parole building. We don't violate individuals for having
16 contact with other parolees in our offices or having contact with other
17 parolees in other drug treatment programs. However, outside of --
18 outside in the community, where it is not a controlled environment, as
19 defense counsel said, we expect that the parolees act in a way not to
20 engage in contact with individuals that they know have criminal
21 records.

22 In this particular environment, in the correctional
23 facility, it is controlled environment; however, Mr. Ovalle has some
24 measure of responsibility controlling who comes to visit him. And
25 one of them is Mr. Akre, whose visit he have should have been

1 refusing simply because he was his co-defendant. Sure, that Mr.
2 Ovalle can't control his curfew while he's incarcerated, he can't
3 control that he's around other inmates, but he can control who visits
4 him when they visit him, and if they visit him. And Mr. Ovalle
5 accepted numerous contacts and visits from his co-defendant,
6 Mr. Akre.

7 So I submit to the Court that this is a violation in an
8 important respect. It's continued behavior on the part of Mr. Ovalle to
9 continue to have contact with Mr. Robert Akre, despite being told not
10 to have contact, specifically with Mr. Akre. And I submit to the Court
11 that the charges should be sustained and Mr. Ovalle held.

12 ALJ ROSS: Okay. I am going to --

13 PVU CHIEF DEL RIO: And our recommendation is
14 that Mr. Ovalle be held to his maximum expiration. He takes
15 absolutely no responsibility for his behaviors, nor his actions.

16 ALJ ROSS: Okay. I'm going to reserve decision.
17 You'll get it in the mail.

18 Thank you all very much.

19 PVU CHIEF DEL RIO: Thank you.

20 MR. OBEDIN: Thank you, Judge.

21 (Whereupon, this proceeding was concluded.)
22
23
24
25

CERTIFICATE

I, Sara Galante, Court Reporter and Notary Public, in and for the State of New York, do hereby certify that I attended the foregoing proceedings, took stenographic notes of the same, and that the foregoing, consisting of 110 pages, is a true and accurate copy of same and whole thereof.

Dated: March 1, 2018

Sara Galante
Sara Galante

EXHIBIT 11

CMSCIRON * * *

NEW YORK STATE - DOCCS
COMMUNITY SUPERVISION
PAROLEE CHRONO REPORT
FROM 01/01/1999 THRU 12/03/2018DATE: 12/03/2018
PAGE: 6NAME: OVALLE, WARREN A
NYSID: 09347560J
DIN: 10R0095AREA:
SPO NAME:
PO NAME:

DATE TIME TYPE ACTIVITY LOCATION

ENTERED BY: JUSTE, GARRY
AREA: SUFFOLK SPO NAME: SPO, UNK SHAW PO NAME: ERICKSEN, JOHN
12/07/2017 04:15PM OTHER VISIT W/PAROLEE LAW ENFORCEMENT
WRITER SERVED MR. OVALLE WITH A COPY OF THE AMENDED VOP CHARGES AND THE NOTICE
THAT HIS PRELIMINARY HEARING SCHEDULED FOR 12/11/17 AT 9:30AM HAS BEEN CHANGED
TO 12/13/17 AT 9:30AM AT SCJ. SUBJECT REFUSED TO SIGN BUT ACCEPTED THE
DOCUMENTS. SGT. MARK SMITH WITNESSED THE SERVICE.
SPO REVIEW: 12/11/2017

ENTERED BY: HAMLETTE, SABRINA
AREA: SUFFOLK SPO NAME: SPO, UNK SHAW PO NAME: ERICKSEN, JOHN
REPORT TAKEN BY: HAMLETTE, SABRINA
12/07/2017 12:29PM OTHER WORK
AMENDED VOP RESUBMITTED
SPO REVIEW: 03/01/2018

ENTERED BY: HAMLETTE, SABRINA
AREA: SUFFOLK SPO NAME: SPO, UNK SHAW PO NAME: ERICKSEN, JOHN
REPORT TAKEN BY: HAMLETTE, SABRINA
12/06/2017 10:00AM CASE CONFERENCE
PO CASE CONFERENCED WITH SPO JUSTE AND BC JENKINS THAT PO HAD RECEIVED A
CALL FROM A LEGISLATURE/ MR. TROTTA REGARDING P. PO WAS DIRECTED NOT TO
CALL MR. TROTTA BACK AND DIRECTED TO PROVIDE HIM WITH THE ASSISTANT
COMMISSIONER CHARLES KELLY CONTACT # [REDACTED]
SPO REVIEW: 12/08/2017

ENTERED BY: [REDACTED]

ENTERED BY: THOMAS, KIRSTEN M
AREA: SUFFOLK SPO NAME: SPO, UNK SHAW PO NAME: ERICKSEN, JOHN
REPORT TAKEN BY: THOMAS, KIRSTEN
12/04/2017 04:10PM LETTER TO OTHER
PO PRESENTED 2 SUBPOENAS FOR DEPUTY WARDEN AND ALL RECORDS TO APPEAR AT PRELIM
SCHEDULED FOR 12/11/17 TO RECORD ROOM AT SUFFOLK COUNTY JAIL/RIVERHEAD. GIVEN T
O SGT BRADY.
SPO REVIEW: 03/01/2018

ENTERED BY: THOMAS, KIRSTEN M
AREA: SUFFOLK SPO NAME: SPO, UNK SHAW PO NAME: ERICKSEN, JOHN
REPORT TAKEN BY: THOMAS, KIRSTEN
12/04/2017 03:30PM TELEPHONE TO OTHER
PO CONTACTED DEPUTY WARDEN HENNESSEY. HE TOLD PO THAT HE WAS EXPECTING SUBPOENA
\$. HE ASKED THAT PO BRING THEM TO THE RECORD ROOM.
SPO REVIEW: 02/28/2018

EXHIBIT 12

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SULLIVAN

THE PEOPLE OF THE STATE OF NEW YORK,
ex rel., WARREN A. OVALLE,

WRIT OF HABEAS CORPUS
ORDER

Petitioner,

INDEX #1813-2019

-against-

LYNN LILLEY, SUPERINTENDENT of Woodbourne
Correctional Facility,

Respondent.

A Writ of Habeas Corpus

1. The legality of the revocation of parole resulting from Parole Warrant #762686 having been argued before this Court on October 2, 2019; and

2. This Court having found that the charges against Warren Ovalle have not been established by a preponderance of the evidence; *Violation of Parole* *were brought in bad*

faith and were an abuse of discretion, now
It is hereby ORDERED, that charges set forth in Parole Warrant #762686 are dismissed; that the revocation of parole be lifted, and that Warren Ovalle be immediately released and restored to Community Supervision, *within 10 days.*

Dated: October 2, 2019
Monticello, New York

[Signature]
The Hon. Stephan G. Schick, J.S.C.

RECEIVED
OFFICE OF COURT CLERK
2019 OCT -2 PM 3:21

EXHIBIT 13

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SULLIVAN

THE PEOPLE OF THE STATE OF NEW YORK, ex rel.,
WARREN A. OVALLE,

Petitioner,

-against-

Index No. 1813-2019

LYNN LILLEY, SUPERINTENDENT of Woodbourne
Correctional Facility,

Respondent.

ORDER TO SHOW CAUSE

Lawrence H. Cooke
Sullivan County Courthouse
Monticello, New York 12701
October 2, 2019

B E F O R E:

HONORABLE STEPHAN G. SCHICK,
Justice of the Supreme Court.

APPEARANCES:

LAW OFFICE OF DANIELLE COYSH, P.L.L.C.,
Attorney for Petitioner
320 Carleton Avenue, Suite 2000
Central Islip, New York 11722
BY: DANIELLE COYSH, ESQ.

LETITIA JAMES, ATTORNEY GENERAL
OFFICE OF THE ATTORNEY GENERAL
Attorneys for Respondent
One Civic Center Plaza, Suite 401
Poughkeepsie, New York 12601-3157
BY: VINITA KAMATH, ESQ.

WARREN A. OVALLE, in Person.

Georgette H. Sayers, RMR,
Senior Court Reporter.

1 THE COURT: This is the People of the State
2 of New York, ex rel., Warren A. Ovalle -- is that
3 pronounced correctly?

4 MR. OVALLE: Yes, sir.

5 THE COURT: -- against Lynn Lilley, the
6 Superintendent of Woodbourne Correctional Facility, and
7 are there other defendants that I'm -- is it just
8 against Mr. Lilley?

9 MS. COYSH: It's against Lynn Lilley, Judge,
10 because he is presently --

11 THE COURT: All right. So can the attorneys
12 put their appearance on the record, please.

13 MS. COYSH: Judge, my appearance for the
14 record on behalf of Mr. Ovalle is Danielle Coysh, 320
15 Carleton Avenue, Suite 2000, in Central Islip.

16 THE COURT: New York.

17 MS. COYSH: New York.

18 MS. KAMATH: Vinita Kamath, Assistant
19 Attorney General for the State of New York, on behalf
20 of Lynn Lilley, Superintendent of the Woodbourne
21 Correctional Facility.

22 THE COURT: All right. And the record should
23 reflect that Mr. Ovalle is here in court.

24 And -- all right. So Miss Coysh, you brought
25 this writ seeking the immediate release of Mr. Ovalle

1 because, under your view, Parole has wrongfully
2 incarcerated him on a violation of parole, is that
3 correct?

4 MS. COYSH: That is correct. It's our
5 position that he's being unlawfully detained based upon
6 his parole revocation.

7 THE COURT: And Miss Kamath, it appears to me
8 the parole revocation is based solely on the allegation
9 that while he was incarcerated in the Suffolk County
10 Jail, a prior co-defendant from ten years earlier from
11 the originating case ten years earlier visited him at
12 the jail and that that was a violation of a special
13 condition of parole not to associate with that
14 co-defendant?

15 MS. KAMATH: Your Honor, there were other
16 charges that were brought against Mr. Ovalle, but --

17 THE COURT: Those charges, the other charges
18 were dismissed by a supreme court justice in Suffolk
19 County, that's my understanding, the other charges.

20 MS. KAMATH: Under the new warrant there were
21 116 charges and approximately 40 were upheld by the
22 hearing officer at the final hearing in March of 2018.

23 MS. COYSH: All visits, Judge -- what's
24 before the judge is simply visits in the Suffolk County
25 Jail. Any other allegation of anything had been

1 dismissed by Judge Santorelli in a writ of habeas
2 corpus.

3 THE COURT: What's disturbing to this Court
4 is that it appears from the records that were presented
5 here, it appears there was a proceeding brought before
6 the Suffolk County Supreme Court Judge Genarelli.

7 MS. COYSH: Judge Santorelli, Judge, a writ
8 of habeas corpus.

9 THE COURT: And after due consideration, he
10 dismissed the case. He dismissed the violation of
11 parole and before the paperwork could be done to
12 release Mr. Ovalle --

13 MR. OVALLE: Ovalle, sir.

14 THE COURT: Ovalle, I'm sorry, Ovalle. --
15 they presented these new petitions for these jailhouse
16 visits, and it appears to be in an effort to -- to
17 overrule Justice Santorelli. Certainly looks that way
18 on the face of it. And it appears from the record that
19 is before me that this co-defendant had been visiting
20 Mr. Ovalle at the Suffolk County Jail on a regular
21 basis and that -- is there an issue as to whether they
22 advised Mr. Ovalle that that couldn't occur?

23 MS. KAMATH: Your Honor, they did advise
24 Mr. Ovalle through the supplementary --

25 THE COURT: Yeah, but they never visited him

1 at the jail. They just charged him. They never -- the
2 position of the State seems to be that even though he
3 was incarcerated in the Suffolk County Jail, he was
4 still on parole supervision, but they never visited
5 him. They never visited him, they never visited his
6 home, they didn't do anything, and then only after
7 Judge Santorelli had -- had dismissed the violations of
8 parole and ordered him to be released, then they
9 brought these charges saying that he'd been visiting --
10 he'd been visiting this co-defendant when he was called
11 down to the visiting room when the co-defendant went to
12 the jail to visit him.

13 And isn't it true, Miss Kamath, that had he
14 been incarcerated in state prison at Woodbourne
15 Correctional Facility where he's currently serving,
16 there would be no problem with him receiving visits
17 from the co-defendant there?

18 MS. KAMATH: That's actually not accurate,
19 Your Honor. I've checked with the department, and
20 they've clarified that. A felon cannot visit an inmate
21 at Woodbourne Correctional Facility.

22 THE COURT: Do we know if the co-defendant is
23 a felon?

24 MS. KAMATH: Based on the assault, I believe
25 so.

1 THE COURT: I don't know, was he convicted of
2 that also? He's a co-defendant, but apparently he's
3 not on parole or not in prison.

4 MS. KAMATH: But I believe he was also
5 convicted in this assault, and I can clarify that with
6 the department, if you'd like.

7 THE COURT: Well, every time somebody visits
8 somebody at Woodbourne Correctional Facility, do they
9 run a check to see if --

10 MS. KAMATH: Yes. Yes, that's my
11 understanding, yes. And, Your Honor, just to clarify
12 the time, so there was this supplementary release
13 report, violation release report that predated the
14 decision of Judge Santorelli. So in other words,
15 petitioner was on notice of the conditions being
16 violated through these visits prior to Judge
17 Santorelli's decision.

18 THE COURT: Is that true, Miss Coysh?

19 MS. COYSH: No, Judge. Let me -- if I can
20 explain. In fact, I was involved with Mr. Ovalle's
21 case at that time as well. I had no notice of this
22 whatsoever. We learned later through a FOIL request
23 that there are journal entries, I'll call them,
24 indicating that there was visits with Mr. Akre and
25 Mr. Ovalle. Judge, nobody from Parole, nobody from

1 anywhere ever told Mr. Ovalle you can't have these
2 visits even after they learned of them. In fact,
3 there's testimony from a lieutenant at the jail that
4 the jail wasn't even notified of any -- that there's
5 not supposed to be a visit. And --

6 THE COURT: Miss Kamath, isn't that standard
7 policy? You can call -- you can contact the Suffolk
8 County Jail and say you've got an inmate there,
9 Mr. Ovalle, he's not allowed to see -- is it Mr. Arke?
10 What is the name?

11 MS. COYSH: Akre.

12 THE COURT: Akre? And then they would stop
13 the visitation.

14 MS. KAMATH: I can't speak --

15 THE COURT: So if it was so important, if it
16 was so incredibly important that he not be able to see
17 Mr. Akre, why didn't they do that, number one? And
18 number two, there doesn't seem to be any evidence of
19 any kind anywhere, any conversation with this
20 co-defendant had any criminal -- criminality to it.
21 They are apparently, from what I understand from the
22 conference downstairs in chambers, they are close
23 friends, almost like brothers, and have a multitude of
24 things in common to talk about that have nothing to do
25 with the ten-year-old assault case or any other alleged

1 criminal behavior and there's no evidence that they
2 were doing anything wrong.

3 MS. KAMATH: But it's the department's
4 position that they need to monitor, you know,
5 whether --

6 THE COURT: Well, couldn't they have
7 monitored whether he saw Mr. Akre by telling the jail
8 not to allow him to see him?

9 MS. KAMATH: I can't speak to whether they
10 could or couldn't do that, but the reality is that he
11 had continuous visits with him despite the fact that
12 this was a special condition on his parole supervision
13 which persists through his local custody at the Suffolk
14 County Jail. Under Executive Law 259-1, he's still
15 under parole release supervision. The conditions still
16 apply.

17 THE COURT: What if he received telephone
18 calls, would that be a violation?

19 MS. KAMATH: It may be, based on the contact
20 provision.

21 THE COURT: Would he not be allowed to
22 receive telephone calls in prison?

23 All right. I interrupted you, Miss Coysh.
24 You're saying that the -- that the charges were only
25 brought after Judge -- Justice Santorelli dismissed the

1 previous petition.

2 MS. COYSH: 100 percent, Judge. It's clear
3 as to what happened. We were waiting for Mr. Ovalle
4 literally to walk out of jail and when that didn't
5 happen, I believe it took us a day or two to find out
6 that they had launched another -- another hold on him
7 merely based upon the visits. No evidence that Mr. --

8 THE COURT: They launched another hold on him
9 without telling him or his attorney?

10 MS. COYSH: Well, he was served -- if I may,
11 Judge, may I walk over to Mr. Ovalle? Just to clarify
12 when exactly he was served? We didn't find out --

13 (Counsel conferred with Mr. Ovalle.)

14 THE COURT: Back on the record.

15 MS. COYSH: Judge, Judge Santorelli had
16 issued his decision on the 29th day of November and
17 Mr. --

18 THE COURT: 2015?

19 MS. COYSH: 2017.

20 THE COURT: '17.

21 MS. COYSH: And signed the release order on
22 November 30th, and Mr. Ovalle tells me he received the
23 paperwork on that detainer on the new parole warrant on
24 December 4th. It was a time where we couldn't figure
25 out what was even happening.

1 THE COURT: So he should have been released
2 at least for four days.

3 MS. COYSH: Hundred percent, Judge, should
4 have been released. Should have been released when
5 Judge Santorelli ordered him released.

6 MS. KAMATH: And, Your Honor, I'm just taking
7 a moment to look for that second warrant, the warrant
8 that we're here on today, which is part of Exhibit E.
9 The date of the warrant is November 30th, 2017, and
10 that's Exhibit E in the petition.

11 THE COURT: That's the same date that Judge
12 Santorelli -- well, actually Justice Santorelli made
13 his decision in November but he didn't actually sign
14 the proposed order until the 30th, which was the same
15 day they lodged their warrant.

16 MS. COYSH: Judge, that's correct. The
17 argument was on November 29th, 2017, and the official
18 order was signed.

19 THE COURT: And what concerns me, too, is
20 that going forward from that date, then some new
21 supreme court judge heard the second one and basically
22 on similar facts came to a different decision than
23 Justice Santorelli. So it concerns this Court that
24 there's some judge shopping going on that if the
25 Division of Parole rules -- loses a case, they'll just

1 file a new warrant on the same or similar charges, hope
2 to get a different judge off the wheel or however they
3 randomly choose judges in Suffolk County. So they got
4 a different judge, they have a second bite at the same
5 apple with a different judge with a different ruling.
6 So --

7 MS. KAMATH: Judge, if I may, the warrant
8 that was vacated by Judge Santorelli was on different
9 charges distinct from the warrant -- the charges
10 contained -- some were overlapping charges --

11 THE COURT: Some.

12 MS. KAMATH: -- but there were new charges --

13 THE COURT: Including this charge was an
14 overlapping charge.

15 MS. KAMATH: The visit charges were not
16 included in the original warrant, because the original
17 warrant led to his custody in Suffolk County Jail. And
18 it was only when he was in custody in Suffolk County
19 Jail that the --

20 THE COURT: Well, did Justice Santorelli or
21 did he not dismiss parole charges based upon the
22 visitation by co-defendant in the Suffolk County Jail
23 visiting room?

24 MS. KAMATH: I believe he did not. I think
25 those were part of the new warrant that is the

1 underlying basis for today's proceeding.

2 MS. COYSH: Judge, the issue that was heard
3 at the preliminary hearing was whether or not
4 Mr. Ovalle and Mr. Akre had contact outside of the
5 jail.

6 THE COURT: Right.

7 MS. COYSH: That was the --

8 THE COURT: So Justice Santorelli dismissed
9 that and it was even outside the jail.

10 MS. COYSH: Correct.

11 THE COURT: So upon the Division of Parole
12 learning that, they provide -- they provide new charges
13 that it was violation for him to visit him inside the
14 jail. Does that sound like -- it sounds like a less
15 serious charge than the ones that Justice Santorelli,
16 Santorini, whatever his name is, dismissed.

17 MS. KAMATH: But Your Honor, it was still a
18 repeated violation of the condition.

19 THE COURT: Well --

20 MS. KAMATH: And if I may, this argument is
21 included in my papers, but the writ of habeas corpus is
22 not the appropriate remedy here. Petitioner's
23 challenging the decision, the merits of the decision,
24 the final decision here, and that needs to be argued
25 within an Article 78 proceeding.

1 And furthermore, if -- even if these
2 challenges are meritorious, the proper remedy is
3 remand, the Court to remand this case for a new
4 hearing. It's not to allow Mr. Ovalle to be released
5 from custody.

6 THE COURT: Well, if the Court were to remand
7 it for a new hearing, how long would that take?

8 MS. KAMATH: The Court could designate a
9 specific time frame for the hearing to occur.

10 THE COURT: I've done that in the past and
11 the Division of Parole has always asked for more time.
12 And what concerns me is he's now been incarcerated for
13 almost the entire two years of his sentence on the
14 violation of parole. So by doing what you suggest, by
15 remanding it, he might be in there longer than if he
16 hadn't brought this proceeding and been successful.
17 Doesn't make any sense.

18 MS. KAMATH: But Your Honor, under the
19 technical terms of the statute, which is Executive Law
20 259-i, he was still under parole release supervision
21 while he was in custody and he clearly violated that
22 condition.

23 THE COURT: Well, all right. This Court
24 finds that -- finds for the petitioner, Mr. Ovalle,
25 finds that the bringing of the instant violation of

1 probation charges a matter of days after Justice
2 Santorini?

3 MS. COYSH: Santorelli,

4 THE COURT: -- Santorelli had dismissed
5 similar charges that were more serious than these, it
6 appears, was brought in bad faith and also appears to
7 have been brought as part of that bad faith to forum
8 shop for a new judge to bring a new proceeding for the
9 sole purpose of keeping Mr. Ovalle incarcerated over
10 a -- what amounts to a super technical violation of
11 parole.

12 The Division of Parole, like any law
13 enforcement agency, is given -- is given by the
14 legislature and the laws of this state a lot of power,
15 a lot of power, and within the giving by the
16 legislature that power is invested an incredible amount
17 of what I would call discretion, to use that power with
18 discretion and not with bad intent. And the facts and
19 the records that are put before me lead me to believe
20 that this -- these violations of parole, based upon the
21 technical violation allowing in the Sullivan -- in the
22 Suffolk County Jail, he went to the visiting room under
23 the supervision of the law enforcement personnel at the
24 jail and spoke to someone he's known his entire life
25 who happened to be ten years earlier a co-defendant in

1 an assault crime is a super technical violation of
2 parole. And based upon the sequence of events where
3 Justice Santorelli had -- had dismissed the parole
4 violations, to bring that on these super technical
5 violations without any evidence, not one scintilla of
6 evidence that any discussions with the co-defendant had
7 anything to do with any illegal activity, just -- just
8 seems an abuse of discretion.

9 It also seems an abuse that to bring these
10 charges when -- when -- if they were so serious -- they
11 claim he was still under supervision, parole
12 supervision, while he was incarcerated. Technically
13 that may be true, but they can't have it both ways.
14 They can't say he's still under supervision but we
15 won't visit him, we won't visit his family, we won't
16 supervise him in any way, but if under other law
17 enforcement supervision he goes down to the visiting
18 room and has a visit with someone, that's a violation
19 of our supervisory conditions of parole, seems to be
20 counterintuitive to me and counterproductive.

21 So I -- the worse thing about this case is
22 that Mr. Ovalle has now served the two years he got
23 from the administrative parole judge for violating
24 parole on these, I think, excessive use of discretion
25 charges. And so I don't know how long the paperwork

1 will take, but he's probably going to do the full two
2 years anyway.

3 How fast can you get an order to this Court?

4 MS. COYSH: I have one with me, Judge.

5 THE COURT: All right.

6 MS. KAMATH: Your Honor, just -- the
7 department has informed me that there's a parole
8 release process that he has to go through which can
9 take approximately a week.

10 THE COURT: Take two years.

11 MS. COYSH: Our client can be released from
12 jail based upon this writ, Judge? This is what
13 happened last time, and this is something Mr. Ovalle --

14 THE COURT: File another --

15 MS. COYSH: That's exactly. He's terrified.

16 MS. KAMATH: I've been informed by counsel at
17 the department that there is a parole release process.

18 MS. COYSH: Judge, may I approach Mr. Ovalle?

19 THE COURT: Sure.

20 MS. COYSH: Judge, the writ of habeas corpus
21 is something for immediate release. It's an unjust
22 detention. When I represented Mr. Ovalle at his
23 preliminary hearing back in 2016 where there was no
24 probable cause found, what the administrative judge did
25 was order him released immediately from the jail, and

1 he was to report to parole by, I think it was 8:30 or
2 9:30, within 24 hours, the next day.

3 THE COURT: The problem with that is that
4 that was from a jail and not a prison system. Prison
5 system has a bureaucracy all of its own, so --

6 MS. COYSH: Judge, if the Court would be
7 inclined to maybe issue language of forthwith or, you
8 know, immediate or something to make sure that this --
9 my client's terrified of what's going to happen, that
10 he's not going to go home because something else is
11 going to come up.

12 My client's telling me that you granting this
13 writ restores him back to where he was, and I would
14 just ask that the Court, whatever, however the Court
15 could do it to make sure it's expedited. If not,
16 Judge, I'll have to bring another writ and we'll be
17 back here.

18 I'd ask that if anything that could be done
19 for today, Judge, his family's here also that could
20 transport him.

21 THE COURT: What is Mr. Ovalle's maximum
22 expiration date on the original sentence?

23 MS. COYSH: Judge, he tells me March 16th,
24 2020.

25 THE COURT: Miss Kamath, you have an

1 alternative order?

2 MS. KAMATH: No, Your Honor, I don't have an
3 alternative order but if I may be given an opportunity
4 to review the order before you.

5 THE COURT: Yeah, I -- I'm not sure that the
6 wording is completely correct. You want to

7 (The document was handed to Counsel.)

8 MS. KAMATH: Your Honor, I --

9 THE COURT: How much time do you need?

10 MS. KAMATH: I've been told by DOCCS, the
11 department's counsel, that it could be at least a week
12 -- approximately a week.

13 THE COURT: All right. I'll give them ten
14 days. Is that sufficient?

15 MS. KAMATH: I think so. But, Your Honor,
16 are you signing this -- are you going to sign this
17 order because I agree that this

18 THE COURT: I'm going to change it.

19 MS. KAMATH: Okay. This legality of the
20 revocation of parole

21 THE COURT: Yeah, that --

22 MS. COYSE: Judge, my client is very
23 concerned that what Parole may try to do to him next is
24 deny his residence. He's lived at the same residence
25 with his mom at 15 -- 15 Locust in Central Islip, 15

1 East Locust in Central Islip, New York, that they will
2 then say that he can't go back to that residence with
3 his mom.

4 THE COURT: Why is Parole so --

5 MS. KAMATH: I can't speak to whether Parole
6 has a proven address, Your Honor.

7 THE COURT: Yeah.

8 MS. KAMATH: I don't have enough information.

9 MS. COYSH: I guess if that happens, Judge,
10 we'll certainly bring it to the Court's attention or
11 whatever. At this point, at this point in time it's
12 here, it's on the record and we'll facilitate your
13 release.

14 THE COURT: All right. Show this to Miss
15 Kamath and see if that --

16 (The document was handed to counsel.)

17 THE COURT: Show that to Miss Coysh also.
18 Show that proposed order to Miss Coysh.

19 MS. COYSH: Thank you. Judge, we have no
20 objection to that order. Thank you.

21 THE COURT: Now Miss Kamath, I know you
22 object to the finding of the Court, but as far as the
23 language, does that give your agencies under -- that
24 you work under sufficient time to process whatever
25 paperwork has to be processed?

1 MS. KAMATH: They've informed me that it take
2 approximately one week, so hopefully the ten days will
3 allow them the time.

4 MS. COYSH: Judge, can I inquire that's ten
5 regular days or just business days? I'm not familiar.

6 THE COURT: No, ten days are ten days.

7 MS. COYSH: Ten days calendar days.

8 THE COURT: Today is the 2nd, so we're
9 talking about August (sic) 12th.

10 MS. COYSH: Okay.

11 THE COURT: Now Mr. Ovalle, you know, that
12 means that you're going to be back on parole at least
13 until I guess next -- what did you say, May or
14 something?

15 MR. OVALLE: March.

16 THE COURT: March. I can understand some of
17 your feelings here, but try not to get too paranoid
18 because I think that the Division of Parole will not
19 attempt to drop another papers, I mean you've been in
20 custody of corrections for what, almost two years, so I
21 don't think you've been charged with any crimes, so I
22 don't know of any more violations they could bring
23 against you. Certainly anything from prior to these
24 charges are so distant, I don't think they could bring
25 them any more. So try not to be too paranoid about

1 this. It's only going to be what, about six months or
2 so and you're going to be completely without any
3 supervision, which goes without saying, but you're not
4 getting any younger, maybe you want to just cool it and
5 not get involved in any of these scrapes.

6 You had -- I read your history. You had some
7 issues, so stop. Getting too old for this, all right?

8 All right, I'm going to sign the order.
9 Maybe -- I'm not going to hand write all these changes,
10 so maybe we can get a bunch of copies and certify them
11 or something?

12 THE CLERK: It's got to be clocked in
13 downstairs first.

14 THE COURT: All right.

15 THE CLERK: It should be taken first to your
16 chambers so Priscilla can copy it.

17 THE COURT: Yeah.

18 THE CLERK: And then it's got to be -- it
19 should be clocked in in our office and then go to the
20 county clerk.

21 THE COURT: All right. So why don't the
22 attorneys stay until we get a copy or certified copy of
23 the order.

24 MS. COYSH: Judge, on behalf of Mr. Ovalle,
25 I'd like to thank you for the Court's time.

1 THE COURT: And Mr. Ovalle, you don't have to
2 thank me. I'm just trying to do my job. Just make
3 sure that this is the last time you're ever arrested,
4 okay?

5 MR. OVALLE: Yes, sir.

6 THE COURT: All right.

7 MS. KAMATH: Thank you.

8 * * * * *

9 C E R T I F I C A T I O N

10 Certified to be a true and correct
11 transcript of the proceedings held above.

12 *Georgette H. Sayers*

13 Georgette H. Sayers, RMR,

14 Senior Court Reporter.

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